Mr Jas Clifford. Motion to advance

TRANSCRIPT OF APPEAL.

Supreme Court of the United States.

No. 1792 467

OCTOBER TERM, 1879.

STATE OF LOUISIANA, ON THE RELATION OF [illegible] Pecu... THE SOUTHERN

PLAINTIFF

EDWARD PILSBURY, Ma
JULES C. DENIS, Admin
JOSEPH G. BROWN, Admin
CHARLES CAVANAC, Admin
JOHN E. RENGSTORFF, Admi.
JOHN McCAFFREY, Administrator of [illegible];
ROBERT E. DIAMOND, Administrator of Police,
JAMES D. EDWARDS, Administrator of Water Works and Public Buildings;

DEFENDANTS IN ERROR;

JOHN J. WECKERLING; JESSE K. BELL; SIMON HERNSHEIM; EMILE F. DELBONDIO; HENRY DELBONDIO; THOMAS H. HUNT; THE STATE OF LOUISIANA; HUGH. W. MONTGOMERY; JOHN R. CLAY; A. R. CLAGUE;

INTERVENORS.

JOHN A. CAMPBELL, } *Attorneys for Relator.*
EDWARD BERMUDEZ, }
B. F. JONAS, } *Attorneys for City of New Orleans and Defendants.*
H. C. MILLER. }
JOHN & W. S. FINNEY, *Attorneys for Hunt, Intervenor.*
THOMAS J. SEMMES, *Attorney for Hugh W. Montgomery, et als., Intervenors.*
E. W. HUNTINGTON, *Attorney for State of Louisiana, Intervenor.*
KENNARD, HOWE & PRENTISS, *Attorneys for John J. Weckerling, et als., Intervenors*

Filed, ~~February~~ July 25th 1879.

L. Graham, Legal Printer. 127 Gravier st., New Orleans, La.

SUPREME COURT OF THE UNITED STATES.

No. .....

State of Louisiana ex rel. Southern Bank

vs.

Edward Pilsbury, Mayor of New Orleans, et al.

INDEX.

	PAGE
Petition for Mandamus	1
Affidavit and Order for Writ	11
Exceptions and Answer of the Defendants	12
Affidavit thereto	14
Supplemental Answer	15
Affidavit and Order to file	18
Intervention of State of Louisiana and Order	18
Intervention of T. H. Hunt and Order	21
Intervention of J. J. Weckerling et al. and Order	24
Intervention of H. W. Montgomery et al. and Order	26
Exception of Res judicata	27
Note of Evidence	28
Memorial of Bondholders to City Council	30
Memorial of same to Council	32
Affidavit and list of Bonds	35
Motion and Order to strike out and discontinue in part	37
RECORD in case of Maenhaut vs. New Orleans	37
Bill for Injunction (Original)	37
Supplemental Bill	49
Answers of City of New Orleans and Administrators	58
Decree of December 21, 1875	65
Amended Decree of February 4, 1876	66

Decree of April 21, 1877 66
Ordinance City Council New Orleans, No. 3130 67
Ordinance City Council New Orleans, No. 3233 67
Affidavits of T. Layton and J. Garr 69
Affidavit of T. Layton 71
Letter of T. Layton to Leeds, Mayor of New Orleans 73
Agreement of Counsel as to City Ordinances 73
Entry on Minutes, 22 January, 1878, dispensing with production of Bonds 74
Report Consolidated Debt "B" 75
Report Bonded Debt 97
Statement Personal Property 104
RECORD, Montgomery vs. New Orleans 108
Petition and Schedule annexed 108–110
Answer, Verdict and Judgment 110–112
Submission of Case No. 25,072 112
Reasons for Judgment of District Judge (Monroe) 113–155
Rule for New Trial 158–160
Refusal of New Trial 161
Final Judgment signed 161
Motions of Appeal by Defendants and Intervenors 162– 4
Filing of Transcript of Appeal 165
Answer to Appeal 165
Extracts from Minutes Supreme Court 165– 6
Opinion of majority of the Court, (Marr J) 167
Concurring Opinion of DeBlanc J 205
Dissenting Opinion of Manning C. J 209
Petition for Writ of Error and Order 223– 5
Bond for Writ of Error 225– 6
Writ of Error 226– 7
Acknowledgments of Service of Citations 228
Agreement of Counsel 228– 9
Certificate of Clerk of Supreme Court 231
Original Writ of Error 232

THIRD DISTRICT COURT
FOR THE PARISH OF ORLEANS.

STATE OF LOUISIANA, EX REL., SOUTHERN BANK,

vs.

EDWARD PILSBURY, MAYOR, AND OTHERS.

No. 75,072.

PETITION FOR MANDAMUS AND INJUNCTION.

Filed December 29, 1877.

To the Honorable the Third District Court for the Parish of Orleans:

The petition of the State of Louisiana, on the relation of The Southern Bank, a Corporation created under the laws of this State, established, domiciled and doing business in New Orleans, respectfully represents, that, in the year of Our Lord, eighteen hundred and fifty-two (1852) during its regular session, the General Assembly of the State of Louisiana passed an Act entitled: "An Act to consolidate the City of New Orleans and provide for the government and administration of its affairs," approved February 23d, 1852, and promulgated as Act No. 71, the thirty-seventh Section whereof reads as follows, viz:

SEC. 37. "*Be it enacted, etc.*, That the debt of the general sinking fund, commonly called the old City debt, and the debts of the three municipalities, whether in the form of Bonds, notes, interest coupons, cash warrants, or any other species of obligations whatever, shall be *assumed and paid* by the City of New Orleans, and said City is hereby *declared liable therefor*. The

Mayor, Comptroller and Treasurer and the Chairman of the Finance Committees of the two Boards of the Common Council, shall constitute a commission to be called the Commissioners of the Consolidated debt of New Orleans; and they shall have power to issue Bonds of the City of New Orleans, having not more than forty years to run, with interest payable at such place, as may be agreed on between said commissioners and the parties to whom the bonds are issued, in semi-annual coupons, *in exchange for any Bonds*, obligations or debts of the old corporation or of any of the municipalities, whether matured or not, or to sell the new Bonds and apply the proceeds to the payment of the matured debts of the old corporation or of the municipalities, but to no other purpose. The Bonds thus issued shall form a stock to be called the *Consolidated Debt of New Orleans.* At the time this act goes into operation, an exact and detailed statement of the indebtedness of the old corporation and of each municipality shall be filed in the office of the Comptroller, by the Secretary of the Board of Liquidators and the municipal comptrollers respectively, when the commissioners of the Consolidated debt shall proceed to divide the debt of the old corporation between the several municipalities in proportion to the assessed value of real estate within the limits of each, according to the State Assessment Roll for 1851. The amount thus apportioned to each, together with its individual indebtedness at the time this Act goes into operation, shall constitute the separate debt of each municipality No. One, No. Two, No. 3. THE COMMON COUNCIL SHALL ANNUALLY, IN THE MONTH OF JANUARY, PASS AN ORDINANCE TO RAISE THE SUM OF SIX HUNDRED THOUSAND DOLLARS, BY A SPECIAL TAX, ON REAL ESTATE AND SLAVES, to be called THE CONSOLIDATED LOAN TAX. and the rate per cent. of said tax, in each municipality, shall be in proportion to the indebtedness of each. *All ordinances, resolutions or other acts passed by said Council, after the first day of January, in each year, shall be null and void, unless the ordinance imposing the Consolidation Loan Tax, shall have been previously passed.* At the end of each and every year, any surplus of the Consolidated Loan Tax remaining in the treasury, after the payment of all the interest and the expenses of the management of said debt, shall be applied to the purchase, from the lowest bidder, of such

Bonds issued under this Act, as have the shortest period to run; and the Common Council shall have the right of rejecting all bids demanding more than the face of the Bonds; for which purpose, public notice shall be given by the Comptroller in the official gazette for thirty days, inviting proposals from Bondholders for the sale, to the City, of the Bonds herein described. From and after the passage of this Act, no obligation or evidence of debt of any description whatever, except those herein authorized, shall be issued by the City of New Orleans or under its authority; nor shall any loan be contracted, unless the same be authorized by a vote of a majority of the qualified voters of said City, which shall be taken in the manner prescribed by the City Council, after ten days proclamation by the Mayor, in the newspaper chosen by the Common Council; and no ordinance creating a debt or loan shall be valid, unless such ordinance shall prescribe ways and means for the punctual discharge at maturity of the capital borrowed or debt incurred; and such ordinances shall not be repealed, until principal and interest of the capital borrowed or the debt incurred are fully paid and discharged."

That in the same year, the said General Assembly passed an Act supplementary to the Act just mentioned, which was approved on February 23, 1852, and promulgated as No. 72, the fifth Section whereof reads as follows, viz:

SEC. 5. "*Be it further enacted, etc.*, That the debt of the City of Lafayette shall be assumed and paid by the City of New Orleans, and the said City of New Orleans is hereby declared liable therefor; and the amount of said debt shall be ascertained, and its payment provided for, and made in the same manner, as the debt of each municipality of New Orleans is ascertained and provided for in the Act to which this Act is a supplement; and in raising annually the Consolidation Loan Tax for the payment of the debt of New Orleans, an additional sum of *Fifty thousand dollars* shall be raised for the purpose of providing for the debt of the City of Lafayette, now added to that of New Orleans, so that the whole amount of the annual levy of taxes for the payment of the debt of New Orleans, shall be *Six hundred and fifty thousand dollars*;"

That, in furtherance of said Section 37, as amended by said

Section 5, of the General Assembly, the City of New Orleans, a municipal corporation created by charter from the General Assembly of said State, established and existing within said State, has issued Bonds according to the tenor of said law, for some TEN MILLIONS OF DOLLARS, in exchange of the Bonds, obligations or debts of the three municipalities, in existence at the time of the adoption of said Acts, for which, said City of New Orleans was liable, and that all the Bonds so issued by said City were used for the purposes contemplated by said Acts;

That by the provisions of said Section 37, as amended, the Common Council of said City was *commanded annually, in the month of January, to pass an ordinance to raise the sum of six hundred and fifty thousand dollars, by a special tax on real estate, to be called the Consolidated Loan Tax, to be applied* FIRST *to the payment of all the interest of said Bonds, and* ANY SURPLUS, *to the purchase, from the lowest bidder, of such bonds, as have the shortest period to run;* and it was provided by said law, that *all ordinances, resolutions or other acts passed by said Council after the first day of January in each year, shall be null and void, unless the ordinance imposing the Consolidated Loan Tax, were previously passed:*

That the Bonds so issued, were negotiable securities, and by reason of the restrictions imposed by the act providing for the issue and the clear and comprehensive provisions for the payment of the interest, the gradual reduction of the number, through a sinking fund, the Bonds were negotiated *at, and above par value*, and have been distributed, on the markets of Europe and of the United States, in due course of business, as a secure, permanent and trustworthy investment, that the Free Banks of the State of Louisiana were compelled by law to invest is said Bonds to secure their circulation, and that persons and corporations have invested their moneys in said Bonds, with unfeigned confidence in the terms of said section 37, for the maintenance and enforcement of which, the public faith of the State of Louisiana and of the City of New Orleans was solemnly and irrevocably pledged;

That, of the Bonds so issued by said City, more than five millions have been retired, and that there are outstanding of

Bonds, so issued, more than four millions,—interest coupons of which, maturing in the year 1876 and 1877, remain unpaid,

That, of said outstanding Bonds, together with coupons matured in said years, and all subsequent coupons up to the maturity of said Bonds payable semi-annually, and each for thirty dollars, relator owns upwards of six hundred (600);

That, in violation of the provisions of said Section 37 of said Act 71 of 1852, which constitutes a *Contract* in favor of the holders of said Bonds and binding on both the State of Louisiana and the City of New Orleans, the Legislature of said State has passed an act entitled "an Act to postpone the levy and collection, by the City of New Orleans, of a tax for sinking fund for the purchase of its Bonds, to authorize the Administrators to modify the last budget and tax-levy, and to repeal conflicting laws and penalties," which was approved on the 12th of March, 1874, and promulgated as Act 53, and that the patent object of said Act was to dispense the Administrators of said City, until the month of December 1876, from the duty of estimating, levying and collecting any tax, for a *sinking fund* for the purpose of purchase of any of the Bonds issued under the provisions of said Section 37 of said Act No. 71, of 1852;

That, in further violation of the said Section 37, which constituted, as aforesaid, a *Contract*, the Legislature of said State has passed an Act entitled "an Act to adjust, regulate and provide for the Bonded Debt of the City of New Orleans, etc., etc., etc.," approved March 6, 1876, and promulgated as Act No. 31, the avowed object of which was to IMPAIR, if possible, the obligation of said contract, and DIVEST THE RIGHTS vested thereunder, by *prohibiting* said City, from levying any tax, for any year, under the provisions of said Section 37 of Act No. 71 of 1852, by attempting to shackle judicial tribunals, and to repeal the said Section and the amendment thereof, as fully appears by Section 7 of said Act No. 31, which reads as follows:

SEC. 7. *Be it further enacted, &c., That no tax for the payment of Bonds or interest on Bonds other than that authorized by the preceding Sections, shall be levied* either for the year 1876, or any year or years thereaftar, by the City of New Orleans, and that all existing laws requiring or authorizing the City Counsel to

levy any tax whatsoever for Bonds or interest on Bonds, other than said Premium Bonds be and the same are hereby repealed,—and it shall be hereafter incompetent for any Court to mandamus the Officers of said City to levy and collect any interest tax other than that provided in this Act, or in case of such mandamus, by a receiver or otherwise, to direct the levy and collection on any such tax";

That both of the Acts last named are in direct conflict with Art. 1, Sec. 10, Par. one, of the Constitution of the United States, as divesting the vested rights of Relator under said Acts of 1852, and as impairing the obligation of the contract of Relator with the said State and City, and should be held and declared to be unconstitutional, null and void and of no effect;

That the Legislature of said State passed an Act entitled "an Act to extend the limits of the Parish of Orleans, &c., &c.," approved March 16, 1870, and promulgated as No. 7 of the Acts of said year, having for its object to abolish the City of New Orleans, as organized under Act 71 of 1852 and by subsequent Acts, and to repeal or modify to a certain extent the provisions of said acts and to create and organize another City of New Orleans, in which it is specially provided that the debt generally known as the *Consolidated City Debt*, existing under the provisions of Section 37 of said Act 71 of 1852, shall be *assumed* and *paid* by the City of New Orleans incorporated by said Act and the said City *was declared liable therefor;* that the commissioners of the Consolidated Debt of the City shall be the Mayor, the Administrator of Finance and the Administrator of Public Accounts, who shall perform all the functions and be vested with all the rights and powers heretofore vesting under previous acts in other named officers;

That the Sections of the Acts of the General Assembly of the State, in the year 1852, before referred to and quoted, *providing* for the Consolidated Stock of the City of New Orleans and its issue in exchange of existing and acknowledged municipal debts, and *stipulating* the annual levy and collection of a special tax to pay the accruing interest and the reduction of the principal, in the mode specified, as well as the power and duty and obligation of levying, collecting and applying the said special tax, constitute a *Contract* binding upon the said State,

the said City of New Orleans, in favor of the holders of the Bonds so issued and negotiated, and that the same cannot be impaired, abrogated or neglected under the authority of the State, without a violation of the Constitution of the United States and of the State of Louisiana, and that the various Acts of the State and of the City, postponing and altering the operation of the acts first mentioned, are inadequate and ineffectual to release the City of New Orleans, from their obligation to perform the contract aforesaid, in all its parts, and especially from the duty of levying, collecting and applying the said special tax in the manner contemplated by said laws herein above quoted;

That the Mayor and administrators of said City of New Orleans, in utter disregard of said Section 37 herein above quoted, and of the amendment thereof; in open contempt of their duties, and of the right of Relator and of other Bondholders alike situated, have persistently and wilfully refused and neglected, for the year 1874, 1875, 1876 and 1877, to perform the duties imposed upon them by laws relative to the raising and application of the special tax, provided to pay the matured coupons and purchase the Bonds issued under the provisions of said Section 37;

That the Mayor and administrators of said City have not only failed to levy said special tax, but have actually *levied*, upon the real estate subjected to the special tax to be raised for the payment of the Consolidated Loan Tax,—other Taxes, to meet other Bonds issued by said City, in violation of the prohibitory clause to be found in said Section 37 which forms part of the contract aforesaid, and was intended, as a valid restraint, upon the powers of the State and of the City to incur new obligations, and that the taxes so illegally assessed were applied, not only to said illegally issued Bonds, but also to other illegal purposes;

That had the salutary prohibitions and restrictions of power contained in said Section 37, and which formed part of the contract aforesaid, been observed and enforced "an immensity of extravagance, corruption, wastefulness, unnecessary and grievously burdensome taxation, bankruptcy, moral and financial ruin, might have been spared to the people of Louisiana" and particularly to the taxpayers of the City of New Orleans, and the apparent actual bonded debt of the City of New Orleans,

illegally swollen to some twenty-three millions, would be to-day, only some four millions and odd hundred thousand dollars.

That, by reason of such illegal issue of bonds, the real estate, subject to taxation, in favor of the consolidated debt, was overwhelmed, under apparent sanction of law, by such excessive and exorbitant taxation, that property holders found themselves unable to bear the additional burden, and the consequence has been, even in the later days, when the special tax was still imposed, that tax payers have, in almost innumerable instances, suspended payment, and the tax intended to be raised for the consolidated debt, has not been met and satisfied, and a debt which, though in reality the best secured, has remained dishonored, and the wholesome restrictions, forming part of the contract, relative to the issue of said consolidated bonds, and which were designed for the protection of the tax payers and citizens generally, have fallen in contempt, and the real estate within city limits has lamentably sunk in value, to the great injury of both: tax payers and holders of said consolidated bonds.

That the said Mayor and administrators have, by all sorts of technicalities, though frivolous and unfounded, sought to contest, judicially and otherwise, the validity and integrity of the bonds issued under said section 37, and their obligation to levy said special tax,—a validity and integrity which have, however, from time to time, been formally and solemnly recognized and proclaimed by numerous subsequent legislative enactments, viz:

1852, Nos. 72, 142; 1854, Nos. 108, 109, 110; 1855, No. 166; 1856, No. 164; 1859, No. 133; 1860, No. 3; 1869, No. 49; 1870, No. 7; 1872, No. 73; 1874, No. 53; 1876, No. 31.

That the Council of the City of New Orleans have intentionally omitted and failed to levy on the real estate in said city, or otherwise, the said annual tax of six hundred and fifty thousand dollars ($650,000) for the purposes of said section 37 of Act 71 of 1852 and the supplement thereof, which it was made their peremptory duty to levy, collect and apply, as is stated in said Act No. 71 and the supplement thereof, and that the consequence has been that bonds issued under the provisions of section 37 have not, since the year 1874, been re-

deemed, and the coupons thereof, maturing on and since the 1st July, 1876, have not been paid;

That the present Mayor and Administrators of said City were specially and duly put in default, in December 1876, to levy the said tax of $650,000 for the year 1877 and that they have refused and failed to levy the same as it was their bounden duty, and that they have, and in the same manner, been lately notified to levy the said special tax for the coming year 1878; and have, notwithstanding said notice, adopted a Budget of expenditures for 1878, whereon they have intentionally omitted to place the amount to be raised to meet the Consolidated Bonds and Coupons aforesaid; and whereon they have placed an amount to meet Bonds illegally issued, as aforesaid, with the intention hereafter of levying a tax to realize said last mentioned amount; the whole to the great injury and damage of Relator and of other Bondholders similarly situated, so that, sums which should be raised and applied to the extinguishment of the Consolidated Loan Debt, will be, as in the past, wrong fully diverted from their legitimate objects and applied to unlawful purposes;

That Relator has demanded payment of the said matured coupons and that the same have not been paid, the Mayor of said City and the Administrator of Finance answering that there were no funds out of which to pay the same.

That the said City and the taxable real estate within its limits are liable for the payment of said matured coupons and for the purchase of said Bonds, to the extent of six hundred and fifty thousands dollars per annum, for the years 1874, 1875, 1876, 1877 and 1878, less coupons paid for 1874 and 1875, the amount of which Relator knows not, and, whereas, said City has not funds to satisfy said obligations, the Council of said City and the members thereof, who went in office under the operation of said Section 37, should be constrained, by the process of this Court, to levy, collect and apply, the said special tax, for the years, during which it should have, and has not, been raised, and this, by a separate tax and assessment for each year, on the real estate within the City;

That the City of New Orleans is estopped from denying the validity and integrity of said Bonds and Coupons, and the ob-

\\gation, on the part of her Council, to levy said special tax, under the provisions of said Section 37, of said Act 71, of 1852, by reason of the Judgment rendered by the United States Circuit Court for Louisiana, in the case of Rosalie Maenhaut et al. vs. the City of New Orleans, No. 7423 of the Docket of said Court, wherein said City had denied liability for said debt, and wherein the said Court has declared said Section 37 to be a CONTRACT, binding upon the State, the City and the Bondholders, and has ordered and compelled a distribution of taxes realized, and has reserved all the rights of the complainants, to a *mandamus*, to compel the levy, collection and application of said special tax, at a future time, to its legitimate objects.

The premises and showing herein made, being considered, Petitioner and Relator pray, that writs of *mandamus* and *injunction* issued herein, commanding E. Pilsbury, the Mayor of the City of New Orleans; J. C. Denis, Administrator of Finance; J. G. Brown, Administrator of Acounts; John McCaffrey, Administrator of Improvements; J. D. Edwards, Administrator of Water Works; Charles Cavanac, Administrator of Commerce; R. E. Diamond, Administrator of Police; J. E. Rengstorff, Administrator of Assessments, the last seven being members of and composing the *Council* of said City of New Orleans, at once to levy, by separate and distinct assessments, and hereafter collect and apply, under the provisions of Section 37, of Act No. 71, approved 23d February, 1852, a special tax of six hundred and fifty thousand dollars ($650,000) for each of said years, 1874, 1875, 1876, 1877, less coupons paid for 1874 and 1875, to meet the coupons overdue and unpaid, and to purchase Bonds, issued under said Section, by the City, as well as a like tax for the year 1878, for the purpose of paying the coupons maturing that year and purchasing Bonds, as contemplated by said Section 37; and forbidding and enjoining said Mayor and Administrators from levying any tax, on the real estate within the limits of said City, which is subject to special taxation, in favor of the Consolidated Loan Debt, under said Section 37, to the injury and prejudice of said Consolidated Debt, and without *first* providing therefor, or show cause, in writing, within such time as this Court may fix, after service of the petition, order and writs herein on them, why said *man-*

damus should not be made peremptory, and said *injunction* perpetuated, that the City of New Orleans and said Mayor and Administrators be notified, as the law provides, of these proceedings, and that, after due hearing, said *mandamus* and *injunction* be *so made, peremptory* and *perpetual*, and that the amounts so raised be exclusively applied to coupons and Bonds held by Relator and others likewise situated; that all other obligations issued be annulled, if found to have been issued without authority—reserving to Petitioner and Relator recourse to personal process, and in damages against each and all said municipal officers, against their property and that of their official sureties; and to a writ of *distringas* against all their revenues and against all the revenues of said City of New Orleans, until the mandates of this Honorable Court shall have been fully obeyed and executed. And they pray for such other and further relief, in the premises, as the nature of the case may require and the law may permit; and, as in duty bound, etc.

J. A. CAMPBELL,
E. BERMUDEZ,
Of Counsel.

AFFIDAVIT.

Thomas Layton, being duly sworn, says that he is the President of the Southern Bank, and that all the facts contained in the foregoing petition are true and correct.

(Signed) THOS. LAYTON.

Sworn to and subscribed before me this 29th December, 1877.

CHAS. T. SONIAT,
Notary Public.

ORDER.

Let the writ of mandamus, as herein prayed for, directing the defendants to comply with the prayer of this petition, or show cause to the contrary, on Saturday, January 5th, 1878, at 11 o'clock A. M., and let the defendants show cause upon the said 5th day of January, 1878, at 11 o'clock A. M., why the writ of injunction prayed for should not be granted.

(Signed) F. A. MONROE,
Judge.

New Orleans, La., December 29, 1877.

ligation, on the part of her Council, to levy said special tax, under the provisions of said Section 37, of said Act 71, of 1852, by reason of the Judgment rendered by the United States Circuit Court for Louisiana, in the case of Rosalie Maenhaut et al. vs. the City of New Orleans, No. 7423 of the Docket of said Court, wherein said City had denied liability for said debt, and wherein the said Court has declared said Section 37 to be a CONTRACT, binding upon the State, the City and the Bondholders, and has ordered and compelled a distribution of taxes realized, and has reserved all the rights of the complainants, to a *mandamus*, to compel the levy, collection and application of said special tax, at a future time, to its legitimate objects.

The premises and showing herein made, being considered, Petitioner and Relator pray, that writs of *mandamus* and *injunction* issued herein, commanding E. Pilsbury, the Mayor of the City of New Orleans; J. C. Denis, Administrator of Finance; J. G. Brown, Administrator of Acounts; John McCaffrey, Administrator of Improvements; J. D. Edwards, Administrator of Water Works; Charles Cavanac, Administrator of Commerce; R. E. Diamond, Administrator of Police; J. E. Rengstorff, Administrator of Assessments, the last seven being members of and composing the *Council* of said City of New Orleans, at once to levy, by separate and distinct assessments, and hereafter collect and apply, under the provisions of Section 37, of Act No. 71, approved 23d February, 1852, a special tax of six hundred and fifty thousand dollars ($650,000) for each of said years, 1874, 1875, 1876, 1877, less coupons paid for 1874 and 1875, to meet the coupons overdue and unpaid, and to purchase Bonds, issued under said Section, by the City, as well as a like tax for the year 1878, for the purpose of paying the coupons maturing that year and purchasing Bonds, as contemplated by said Section 37; and forbidding and enjoining said Mayor and Administrators from levying any tax, on the real estate within the limits of said City, which is subject to special taxation, in favor of the Consolidated Loan Debt, under said Section 37, to the injury and prejudice of said Consolidated Debt, and without *first* providing therefor, or show cause, in writing, within such time as this Court may fix, after service of the petition, order and writs herein on them, why said *man-*

damus should not be made peremptory, and said *injunction* perpetuated, that the City of New Orleans and said Mayor and Administrators be notified, as the law provides, of these proceedings, and that, after due hearing, said *mandamus* and *injunction* be *so made, peremptory* and *perpetual*, and that the amounts so raised be exclusively applied to coupons and Bonds held by Relator and others likewise situated; that all other obligations issued be annulled, if found to have been issued without authority—reserving to Petitioner and Relator recourse to personal process, and in damages against each and all said municipal officers, against their property and that of their official sureties; and to a writ of *distringas* against all their revenues and against all the revenues of said City of New Orleans, until the mandates of this Honorable Court shall have been fully obeyed and executed. And they pray for such other and further relief, in the premises, as the nature of the case may require and the law may permit; and, as in duty bound, etc.

J. A. CAMPBELL,
E. BERMUDEZ,
Of Counsel.

AFFIDAVIT.

Thomas Layton, being duly sworn, says that he is the President of the Southern Bank, and that all the facts contained in the foregoing petition are true and correct.

(Signed) THOS. LAYTON.

Sworn to and subscribed before me this 29th December, 1877.

CHAS. T. SONIAT,
Notary Public.

ORDER.

Let the writ of mandamus, as herein prayed for, directing the defendants to comply with the prayer of this petition, or show cause to the contrary, on Saturday, January 5th, 1878, at 11 o'clock A. M., and let the defendants show cause upon the said 5th day of January, 1878, at 11 o'clock A. M., why the writ of injunction prayed for should not be granted.

(Signed) F. A. MONROE,
Judge.

New Orleans, La., December 29, 1877.

EXCEPTION AND ANSWER.

Filed January 5th, 1878.

State of Louisiana ex rel. Southern Bank vs. E. Pilsbury, Mayor, J. C. Denis, Adm'r, and others.	No. 25,072 3rd District Court, Parish of Orleans.

Now come defendants and except to the jurisdiction of this Honorable Court, to grant the writs of mandamus and injunction sought to be obtained herein on the following grounds :

First. That by the provisions of Act No. 5 of the Extra Session of 1870, and of the 7th Section of Act No. 31 of 1876, the Courts of this State are absolutely prohibited from issuing any writ of mandamus to compel respondents to pay any debt not liquidated by judgment, or to compel them to levy and collect any interest tax, other than that provided for in said act No. 31 of 1876.

Second. That it is made the duty of respondents by the City Charter, and by the 6th Section of the said Act No. 31 of 1876, to levy and collect a tax on the assessed value of all property subject to taxation within the City of New Orleans, not to exceed the rate of one and one-half per centum on the dollar, which said tax is authorized to be levied and collected for the purpose of meeting all expenses of the City Government, as well as for paying the interest on the bonded debt under the provisions of said Act No. 31 of 1876.

Third. That no ministerial duty is imposed by law upon your respondents to levy the tax, sought to be enforced herein by mandamus, but on the contrary, your respondents are expressly forbidden by the 7th section of said Act No. 31 of 1876, from levying said tax either for the year 1876, or for any year thereafter, and respondents say, that said Act was approved and became a law on the 6th day of March, 1876, before your respondents came into office and has been the law, binding upon respondents, ever since.

Fourth. Respondents say that the Legislature by Act No. 53 of 1874, suspended the levy and collection of any tax for sinking fund, under said Act No. 71 of 1852, until the month of December, 1876, which said Act No.

53, of 1874, respondents charges was passed with the assent, if not at the instance, and by the direct procurement of Thomas Layton, the President of the Southern Bank, acting, as respondents believe, on behalf of said bank, and as agent for other holders of consolidated bonds, and respondents further say, that tax to pay the interest on said consolidated bonds, was regularly assessed and collected until the year 1876, when it was prohibited by the provisions of said Act No. 31, of 1876.

Wherefore respondents respectfully pray that their exceptions may be maintained, and that this suit may be dismissed at relator's costs.

And should these exceptions be overruled, and not otherwise, then respondents reiterating and pleading the matters therein contained as part of their answer, further answer and say:

That the interest tax for the payment of coupons of the consolidated bonds was regularly assessed and collected by the City of New Orleans up to the year 1876, when its further assessment and collection, as well as of all tax for payment of the principal of said bonds, was prohibited by the provisions of the 7th section of Act No. 31, of the Legislature, approved March 6, 1876, which Act is in force, and binding on respondents.

Respondents further say, that the assessment and collection of a tax for the payment of the principal of said bonds was suspended from the year 1874 until December, 1876, under the provisions of said Act No. 53 of 1874, which act was passed with the consent, if not at the instance, and by the procurement of the relators.

Respondents further say, that the provisions of the 37th Section of Act No. 71 of 1852, herein sought to be enforced by mandamus are unconstitutional, null, and void, because the objects of said provisions are not set forth, expressed, or referred to in the title of said Act, as required by article 118 of the constitution of 1845, which was in force at the date of the passage of said act.

Respondents further say, that the tax provided for in the said 37th Section of said Act of 1852 is unconstitutional, null and void, and violative of Article 127 of the Constitution of 1845 and Article 123 of the Constitution of 1852, because, first, that it is to be assessed alone on real estate and slaves, and

personal property is exempted from assessment, and secondly because the rate per cent. of said tax, in each municipality, is to be in proportion to the indebtedness of each, both of which provisions are in violation of the Constitution and null and void, and respondents say that all acts or parts of acts passed since 1852, and which relators allege recognize the bonds and tax specified in said 37th Section of said Act of 1852, in so far as said recognition is concerned (if such was their purpose), are upon the same grounds, wholly unconstitutional, null and void.

Wherefore respondents pray to be hence dismissed with costs and for all general and equitable relief.

E. PILSBURY,
Mayor.
CHAS. CAVANAC,
Administrator of Commerce.
J. E. DENIS,
Administrator of Finance.
J. G. BROWN,
Administrator of Public Accounts.
JNO. McCAFFREY,
Administrator of Improvements.

B. F. JONAS, City Attorney.

HENRY C. MILLER, Attorney.

Personally appeared Edward Pilsbury, Mayor of the City of New Orleans, who being duly sworn, says that all the facts and allegations set forth in the foregoing exception and answer, are true, to the best of his knowledge and belief.

E. PILSBURY.

Sworn to and subscribed before me this Fourth day of Janury, 1878.

J. PARIS CHILDRESS,
First Justice Peace.

SUPPLEMENTAL ANSWER.

Filed January 21st, 1878.

The State of Louisiana, ex rel. The Southern Bank, *vs.* The City of New Orleans, Its Mayor, et als.	No. 25072 Third District Court, Orleans Parish.

Now come the defendants herein, and reserving the benefit of the exceptions, herein filed, and insisting on the same, in case said exceptions are overruled, with the leave of the Court they file this amended and supplemental answer, with full reservation of the benefit of the original answer herein, and reiterating all the allegations therein; and these defendants aver and say, that in addition to the grounds set forth in the original answer, the Act of 1852, approved 23d of February, 1852, entitled "An Act to consolidate the City of New Orleans, and to provide for the government and administration of its affairs;" and especially the 37th section of said Act, is wholly unconstitutional, null and void, being violative of article 127 of the Constitution of 1845, and of article 123 of 1852, for this, to-wit:

That the said Act of the Legislature of Louisiana, approved February 23d, 1852, directs a tax to pay the debt of the City of New Orleans, accrued prior to the division of the city into municipalities, termed in the said act the debt of the old corporation, and directs said tax to be imposed in proportion to the indebtedness of each municipality; the said indebtedness of each municipality for the old city debt is directed to be adjusted by the said act upon a purely arbitrary basis, that is, upon and in proportion to the value of real estate alone contained in each municipality, according to the assessment roll of 1851; the rate per cent. in each municipality of the tax is directed by said act to be in proportion to said indebtedness, and the tax is directed to be levied upon the value of the real estate and slaves contained in each municipality, and in these respects said act of 1852 is plainly violative of said articles of the Constitutions of 1845 and of 1852, which prescribed that

taxation shall be equal and uniform, and that all property should be taxed in proportion to its value, and that no one species should be taxed higher than another; and said articles of the Constitution prohibit the arbitrary and unusual mode by which said Act of 1852 attempts to exercise the taxing power.

That said Act of 1852, and the 37th section thereof, in so far as it seeks to dispose of the debts of the three municipalities existing at the date of 1852, directs the same mode of taxation and apportionment prescribed, with reference to the said debt of the old corporation, and is in that respect unconstitutional, null and void, as repugnant to said articles of the Constitution.

That under said articles of the Constitution, it was wholly incompetent for the legislature to exempt from the tax directed to be imposed by said Act of 1852 the entire personal property contained in the municipalities at the date of said Act of 1852, and in the City of New Orleans, as it has existed since said Act of 1852; that the amount of personal property in the municipalities, at the date of said Act, exceeded several millions of dollars in each of them, and the aggregate of personal property in the city of New Orleans, now and since the Act of 1852, is largely in excess of that which was contained in the municipalities at the date of said Act of 1852; that under the said articles of the constitution of 1845 and 1852, which directed taxation shall be equal and uniform, and no one species of property shall be taxed higher than another of equal value, it became obligatory upon the legislature and upon the city of New Orleans, to tax all property in proportion to its value, and without excepting one species of property and taxing the burden wholly upon another species of property, as said Act of 1852 seeks to do in violation of said articles of the Constitution.

That said Act of 1852, and the 37th section thereof, is repugnant to articles 118 and 115 of the Constitutions of 1845 and 1852, in this, that in the body of the Act it seeks to abolish the subsisting governments of the municipalities and to create a new government for the city, to liquidate the debt of the old corporation and of the three municipalities by the issue of bonds, providing for a tax to pay said debts and bonds, to im-

pose extraordinary restrictions upon the city of New Orleans, for the exclusive benefit of said bonds, that none of these objects of said Act, and of said 37th section of said Act of 1852, are expressed or implied in the title of said Act, which is, "An Act to consolidate the city of New Orleans and provide for the government and administration of its affairs." Nor are any other of the objects of said Act of 1852, expressed or implied in its title, by reason of all of which all of said 37th section of said Act is wholly inoperative, null and void.

That said Act of 1852, in violation of said articles of the constitution of 1845 and 1852, embraces many objects of legislation, distinct in their nature, and constituting subjects for distinct legislation.

And upon said grounds the tax claimed by relator, and sough to be enforced herein, is repugnant to and prohibited by said articles of the Contitutions of 1845, and 1852, and said Act of 1852, and especially the 37th Section thereof, and all the provisions of said Act, which have for their object to impose said tax, or authorize the issue of said bonds and coupons, on which relator's demand is founded, are wholly void and null, because violative of, and repugnant to said articles of the Constitutions of 1845 and 1852.

And these respondents further say, that there is no law authorizing the tax claimed in the petition.

And that there is no case for an injunction made by the petition, nor are the legal requisites for said writ complied with, or offered to be complied with.

By reason of all of which, the tax directed by said Act of 1852, and claimed in the petition, cannot he demanded or enforced, and said Act of 1852, and all legislation professing, recognize, or enforce said Act, or said tax, is void and null; as violative of the said Articles of the Constitution, and on the grounds aforesaid and the relator is entitled to no part of the relief prayed for.

Wherefore respondents pray that this supplemental answer

be filed, for judgment in their favor, dismissing relator's application and for general relief.

E. PILSBURY,
Mayor.
J. C. DENIS,
Administrator of Finance.
ROBT. E. DIAMOND,
Administrator of Police.
CHAS. CAVANAC,
Administrator of Commerce.
J. G. BROWN,
Administrator of Public Accounts.

Personally appeared Edward Pilsbury, Mayor of the City of New Orleans, who being duly sworn says that all of the facts and allegations in the foregeing supplemental answer are true, to the best of his knowledge and belief.

E. PILSBURY, Mayor

Sworn to and subscribed before me, this 10th day of January, 1878.

J. PARIS CHILDRESS,
First Justice Peace, Parish Orleans.

Let this supplemental and amended answer be filed.

New Orleans, January 21, 1878.

F. A. MONROE, Judge.

INTERVENTION OF THE STATE OF LOUISIANA.

Filed January 14th, 1878.

The petition of intervention of the State of Louisiana, humbly shows that the said State of Louisiana has a large interest in the result of the suit instituted by the relators in this case, and prays that she be allowed to make this, her intervention, for this, to-wit: Petitioner shows that previous to the seventeenth of June, 1872, the State of Louisiana was the holder and owner, as a trustee, of two hundred and eighteen consolidated bonds of the City of New Orleans, of this class and character, and a portion of the series of bonds upon which relator has brought his action; that said bonds were for one

thousand dollars each, that they constituted a portion of what is known and described as the Free School Fund, which fund was created and established by Act 321 of 1855, and by Act No. 182 of 1857, of the Legislature of Louisiana; that under the Act of Congress passed February 15, 1843, it was provided that the proceeds of certain lands donated by the United States to the State of Louisiana, should be reserved and appopriated for the use of the schools, and that the State should obligate herself to preserve the same as a trust fund which should never be alienated or applied to any other object; that accordingly the State of Louisiana did pass the acts above referred to, of '55, '57, by which said proceeds of the sales of the donated lands were invested in productive bonds of which the Secretary of State and the Treasurer of the State were made the custodians; and further, by the Constitution of the State, the fund thus created was made unalienable. Now your petitioner shows that while this fund, including the two hundred and eighteen consolidated bonds above described, was in the custody of the Secretary of State and the Treasury, certain persons procured the passage of an act of the Legislature, known as Act 81 of the Legislature of 1872, by which this fund, including the aforesaid bonds, was transferred from the custody of the Secretary of State and Treasurer to other parties, and were sold at public auction for State warrants; that such transfer and sale were acts of spoliation and breaches of trust, and had been so determined by the Supreme Court, of which the purchasers of said bonds and the subsequent holders thereof had due legal notice; that petitioner is able to identify said bonds and will institute proceedings to obtain possession of the same, and has duly notified the City of New Orleans not to pay or recognize said bonds as due and payable to any other holder thereof than the State of Louisiana.

And now the petitioner, having an interest, as set forth, in the premises, in the enforcement of the validity and legality of the consolidated bonds of the city of New Orleans, prays for leave to intervene and join the relator in their demand.

J. C. EGAN, *Ass't Att'y General.*
E. W. HUNTINGTON, *Attorney.*

Let this intervention be filed as herein prayed for.

F. A. MONROE, *Judge.*

New Orleans, January 14th, 1878.

Intervention of T. H. Hunt.

Filed January 14, 1878.

State of Louisiana, ex rel., The Southern Bank *vs.* Ed. Pilsbury, Mayor, et als.	Third District Court, Parish of Orleans. No. 25,072.

This petition of intervention of Thomas H. Hunt, a resident of the Parish of Orleans, in the above entitled cause, filed with the leave of the Court,

Respectfully represents, that your petitioner is the holder and owner of two series of Premium Bonds issued by the City of New Orleans, in pursuance of an act of the Legislature of Louisiana, approved March 6th, 1876, numbered 31 of the acts of that year, and various ordinances of the City Council, numbered 3130, 3140, 3233, 3336, Administration Series, which said ordinances are made parts of this petition of intervention, the said two series of bonds, held by your petitioner as aforesaid, being numbered 2742 and 2743, each series comprising one hundred bonds, each for twenty dollars, and the whole amounting to four thousand dollars.

The said Premium Bonds are hereto annexed for greater certainty.

This intervenor further represents that he has an interest to defend this suit, inasmuch as it questions the validity of his bonds, seeks to divest the funds destined for their payment, and to enjoin the city officers from levying, collecting and applying said funds as directed to the satisfaction of said bonds. That this intervenor is specially authorized to intervene in this suit by the 16th Section of Act 31 of the Acts of the Legislature of 1876.

This intervenor joins with the defendants in the defence of this suit, and adopts and reiterates all the exceptions and defences pleaded by said defendants or by the City of New Orleans, not inconsistent herewith.

1. And this intervenor further pleads by way of peremptory exception, that this Honorable Court is incompetent and without jurisdiction to issue a writ of mandamus, as prayed for, and is specially prohibited from doing so by the 7th Section of said Act No. 31, of the Session Acts of 1876.

2. That the Mayor and Administrators of the City are incompetent to levy, and prohibited by the 7th Section of said Act 31 of the Acts of 1876, from levying the tax sought to be enforced by plaintiffs.

3. That no summary action for the collection of a debt is admissible against the City of New Orleans; but such actions must be in ordinary form.

4. That the injunction asked for, if granted, would arrest the Mayor and Administrators in the performance of their proper legislative and executive functions, overthrow the City Government, and result in anarchy.

5. That the bonds sued upon are invalid, being issued without authority of law. That the 37th Section of Act No. 71 of the Session Acts of 1852, in pursuance of which they purport to have been issued, is unconstitutional for want of a proper title. That so much of said section as restricts the legislative functions of future legislatures, and the exercise of such legislative powers, as may be conferred from time to time by the legislature, upon the Mayor and City Council, is null and void, being beyond the power of the Legislature of 1852 or any other year.

6. That the said 37th section of said Act No. 71, is invalid and unconstitutional in this, that the debt of the sinking fund, commonly called the old city debt, is distributed among and imposed upon the Districts, united and incorporated by said Act No. 71, into a new corporation, arbitrarily in proportion to the respective values of real estate in each Municipality, leaving the values of slaves and other taxable property out of the calculation altogether, although the tax sought to be imposed operates on real estate and slaves; thus imposing on the Districts having more value in real estate and less in slaves, a heavier tax than on others having more value of slaves and less real estate.

That it imposes and directs to be levied on each District its proportion of tax, arbitrarily fixed according to the State Assessment of 1851, and not upon future assessments to be made from time to time, and without any regard to subsequent fluctuations in value. That thus the old city debt, which up to the date of the passage of said Act No. 71, bore equally upon the tax-payers and taxable property of the several Municipalities, was changed by the said 37th Section, upon the tax-payers and taxable property of the several Municipalities or Districts unequally, a different rate of taxation for the old city debt being thus established for each District; and the rate determined by the State Assessment of 1851, being fixed without regard to changes of value or future assessment, until the whole consolidated debt is paid. That the said 37th Section imposes unequal taxation, and violates Art. 127 of the Constitution of 1845, which was in force at the time said Act No. 71 was passed.

7. That there was at the time of the enactment of said act No. 71 of the Acts of 1852, and that there has been ever since within the Districts charged with the tax imposed by the 37th Section, other taxable property of great value, besides real estate and slaves, which was then and ever since has been taxed; and that the tax imposed by said section is unequal and wanting in uniformity in this, that it affects only real estate and slaves, and not the other taxable property within said Districts. That the said Section violates both the letter and spirit of Art. 127 of the Constitution of 1845, and is invalid and of no effect as respects the taxation sought to be imposed.

And for further answer, this Intervenor denies all, and singular the allegations of the plaintiff's petition, not specially admtited herein.

And thus Intervenor prays that plaintiff's petition be dismissed at its own costs, and for judgment in favor of the defendants and this Intervenor, and for all general equitable relief.

JNO. AND W. S. FINNEY,
Attorneys for Intervenor.

Let this intervention be filed as herein prayed for.

F. A. MONROE, *Judge.*

New Orleans, January 14th, 1878.

9024
22

Intervention of Weckerling et al.

Filed January 14th, 1878.

State ex rel., Southern Bank *vs.* Edward Pilsbury, et al. } Third District Court, Parish of Orleans. No. 25,072.

To the Hon. F. A. Monroe,
Judge of the Third District Court.

The petition of John J. Weckerling, Jesse K. Bell, Simon Hernsheim, Emile F. Delbondio, and Henry Delbondio as agent and in behalf of Estate of F. Delbondio, respectfully shows:

First. That petitioners are all residents of New Orleans, and are owners of real estate therein subject to and assessed for taxation in the First, Fourth and Sixth Districts of said city respectively, and have been such for some years.

The said Weckerling owns and is assessed for real estate in the First and Fourth Districts, assessed at $21,200.

The said Hernsheim is the owner of real estate in the Sixth District, (which District was up to the year 1870, in the rural part of the Parish of Jefferson), and which is assessed at $28,000.

The said Bell is the owner of real estate in the Fourth District of said city, assessed for taxation at the sum of $14,000.

The said Emile F. Delbondio is owner of real estate in the Fourth District, assessed to taxation at $9,000.

The said Henry Delbondio represents, as aforesaid, real estate in the First District, assessed at $18,000 to Fred. Delbondio.

Petitioners annex and make part hereof the official certificates of the Department of Assessments marked "A" and "B," and map of the City of New Orleans, marked "C."

Second. That the petitioners and each of them as such owners and tax payers, and as residents of New Orleans, have a legal right to intervene herein and oppose the demands of the relator; and they adopt all the defences set up by the defendants.

Third. They show to the Court and each of them avers and charges:

1. That no mandamus can be granted herein because the same is forbidden by law.

2. That no injunction can be legally granted herein, because,—

(a). An injunction will only be granted in an action properly instituted by petition and citation, and in favor of a real party in interest as plaintiff; and not on a petition in the form adapted to mandamus.

(b). The petition does not disclose any grounds for the injunction asked for.

(c). The judicial power does not extend to the granting of such an injunction as that asked for.

(d). The injunction will not lie for the reasons hereinafter also set forth with regard to the mandamus, also;—

3. Neither mandamus nor injunction will lie in this case, because it is not the duty of the defendants to levy the tax demanded by relator;—in this;

(a). The said Acts Nos. 71 and 72, violate Art. 118 of the Constitution of 1845, of the State of Louisiana, having more than one object, and the same not being express in their titles, respectively.

(b). The agreements or contracts alleged by relator as contained in and made by the 37th Section of Act No. 71 of 1852, and Section 5 of Act No. 72 of 1852, with reference to the imposition of said tax, are additional to and beyond the "one object" of the acts respectively, and moreover, are not expressed in the title of said acts, respectively.

(c). The tax attempted to be provided by said sections of said acts, being, as alleged, a tax on real estate only, and not being equal and uniform even as to real estate, was, and is unconstitutional, null and void, being in violation of Art. 127 of the said Constitution of 1845.

Fourth. They aver and show that in no event ought the said

tax be ordered to be levied on the Fourth, Fifth, Sixth and Seventh Districts of said city.

Fifth. They aver and show that the interest of each of the petitioners herein exceeds the sum of $500, and the amount in dispute, as to each of your petitioners exceeds the sum of $500.

Whereupon petitioners pray that they may be permitted to intervene herein and oppose the demands of the relator; that the parties hereto may be duly notified; that the demands of the relator may be rejected, and for general relief.

KENNARD, HOWE & PRENTISS,
Attorneys for Intervenors.

Let the intervention be filed as herein prayed for.

F. A. MONROE, *Judge.*

New Orleans, Jan. 14th, 1878.

INTERVENTION OF MONTGOMERY ET AL.

Filed January 21st, 1878.

The State of Louisiana, ex rel. Southern Bank *vs.* Edward Pilsbury, Mayor, et al.	Third District Court Parish of Orleans, No. 25,072.

To the Honorable the Third District Court, for the Parish of Orleans.

The petition of intervention of Hugh W. Montgomery, John R. Clay and A. R. Clague, who are citizens of the State of Louisiana, and residents of the city of New Orleans, with respect represent that they own real estate in the city of New Orleans, and are tax-payers on the same to said city, in a sum exceeding five hundred dollars, and they and other tax-payers of said city are deeply interested in this suit, and the matters therein involved, and they intervene for the purpose of protecing said interest.

That while they recognize the validity of the consolidated bonds issued by the city of New Orleans, under the provisions

of the Act No 71, approved February 23d, 1852, and while they do not contest the existence and validity of the contract between said city, and the holders of said consolidated bonds created by the 37th Section of the said Act of 1852, and while they join with the relator in his demand for the imposition of the tax on the real estate in said city, to raise the sum of six hundred and fifty thousand dollars for the year 1878, and for future years that said sum shall be raised annually, until the said consolidated bonds are paid, principal and interest, yet they protest against, and by this intervention, desire to defeat the immediate levy of $650,000 per annum, for the years 1874, 1875, 1876, 1877, as demanded in the petition of the relator.

Petitioners aver that the imposition of taxes to raise the amount of $650,000 per annum for the years already passed, and just above mentioned would be ruinous and lead to bankruptcy, so that neither the bondholders, nor the city of New Orleans, or its inhabitants would profit by compliance with the demand of the relator in that respect; therefore, these petitioners pray that they may be allowed to intervene and join in the prayer of the relator, to try the special tax mentioned in the petition for future years, commencing with the year 1878, and to join the defendants in resisting the levy of the special tax for past years.

THOMAS J. SEMMES,
Of Counsel.

Let the within Intervention be filed.

F. A. MONROE, *Judge.*

New Orleans, January 21st, 1878.

RELATOR'S EXCEPTION OF *Res Judicata.*

Filed January 23d, 1878.

State ex rel., Southern Bank
vs.
Ed. Pilsbury, Mayor, et als.
} Third District Court, for the Parish of Orleans.

The relator—in bar to the issues sought to be raised by the

defendants and by the intervenors, who join them relative to the constitutionality of the law invoked by the relator, viz, Section 37 of Act 71 of 1852 as amended,—pleads:

That said objections come too late; that the same should have been pleaded before the rendition of the judgment made in the case of A. R. Montgomery vs. the City of New Orleans, No. 8224 of the Docket of the Circuit Court of the United States, for Louisiana, which is herewith filed together with the record wherein said judgment was rendered, and that said judgment which is final and executory is invoked as *res judicata*.

Wherefore, relator prays that this exception of *res judicata* be sustained, and that all the said issues made by the said defendants and said intervenors be ignored and overruled and for general relief, etc.

J. A. CAMPBELL,
E. BERMUDEZ,
Attorneys.

Filed January 21st, 1878.

Documents offered in evidence on the twenty-first day of January, 1878, in the cause:

State of Louisiana, ex rel., Southern Bank
vs.
Ed. Pilsbury, Mayor, et als.
No. 25072.

State of Louisiana, Third District Court, Parish of Orleans.

Hon. F. A. MONROE, *Judge*, presiding.

APPEARANCES.

Messrs. E. Bermudez and J. A. Campbell, Attorneys for Relator.

Messrs. B. F. Jonas and H. C. Miller, Attorneys for Respondents.

Messrs. Thos. J. Semmes, Kennard, Howe & Prentiss, J. & W. S. Finney, Attorneys for Intervenors.

Mr. J. C. Egan, Attorney for the State of Louisiana.

Thirteen documents, pages 1, 2, 3, 4, 5, and 6.

Counsel for relator offers in evidence the record in the case of Maenhaut vs. City of New Orleans, No. 2473, of the docket of the Circuit Court of the United States, for this State.

Also the list of bonds held by relator, with affidavit thereto.

In response to the *subpœna duces tecum* herein issued, the defendants produce a copy of the Ordinance No. 3233, Administration Series, and statement of the commissioners of the consolidated debt, made on December 31st, 1877, containing the statement of the consolidated debt under the law of 1852.

Counsel for respondents offers in evidence the report of the consolidated debt marked (B).

Also the statement of the bonded debt of the City of New Orleans, beginning with September 3d, down to the present time, marked (C), and statement of the assessment of real estate and personal property of the Department of Assessments.

Counsel for intervenor, Thomas H. Hunt, offers in evidence the Premium Bond described in, and annexed to, his petition of intervention, being the whole of the series No. 2742 and 2743.

Counsel for intervenor John J. Weckerling and others, owners of real estate, offers documents A, B, and C, annexed to the intervention; certified copies of the deed to be had by referring to the original, in order that the record be not encumbered.

On the intervention of Hugh W. Montgomery, and others, it is admitted that the intervenors, Hugh W. Montgomery, A. R. Clague, and John R. Clay, are tax payers of real estate in this city as stated in the petition of intervention, and reside in this city. Same admission as to residence and citizenship of the other intervenors.

Counsel for intervenors offers in evidence Documents marked D. & E. It is admitted that the intervenors in the intervention of John J. Weckerling and others, are tax payers on real estate as stated in the certificate annexed to their intervention, and that

Simon Hernsheim acquired his property in the Sixth District, on the 27th of May, 1869.

Counsel for relator offers in evidence specially the affidavit of Thomas Layton, in the case before the Circuit Court of the United States, relative to the procurement of the Act of 1874.

Relator offers in evidence letters marked L & M.

OFFICIAL.

Filed January 21st, 1878.

To the Hon. the Mayor and Administrators of the City of New Orleans, composing the Council of said City:

GENTLEMEN:—Representing as we do, Holders for about a million and a half of the Bonds of the City of New Orleans, known as the CONSOLIDATED CITY BONDS of 1852, and acting as Counsel to the plaintiffs in the case of R. Maenhaut et als. vs. The City of New Orleans, pending before the United States Circuit Court in this city, wherein the rights of such Bondholders are asserted,

We respectfully invite the attention of your Hon. Body to Section 37 of the Consolidation Act or Charter of 1852, (Session Acts, p. 53), and to Sec. 5 of the supplemental act thereto, annexing the City of Lafayette, (p. 56), which, among other matters, provide:

That the Council shall, annually, in the month of January, pass an ordinance to raise the sum of six hundred and fifty thousand dollars, by a special tax on real estate, to be called the CONSOLIDATED LOAN TAX, and that *all ordinances, resolutions or other acts passed by said Council, after the first of January in each year, shall be null and void, unless the ordinance imposing the consolidation loan tax,* SHALL HAVE BEEN PREVIOUSLY PASSED.

In connection with this subject, we submit to your consideration, that the Supreme Court of the United States has decided

in the case of VAN HOFFMAN vs. CITY OF QUINCY, of undoubted authority, (see 4 Wallace Report, p. 535), that:

"Where a statute has authorized a municipal corporation to "issue bonds and to exercise the power of local taxation, in "order to pay them, and persons have bought and paid "value for Bonds, issued accordingly, the power of taxation "thus given *is a contract*, within the meaning of the Constitu- "tion, and cannot be withdrawn, until the contract is satisfied. "The State and the Corporation, in such a case, are equally "bound.

"A subsequently passed Statute which repeals or restricts the "power of taxation so previously given, is, in so far as it affects "Bonds bought and held under the circumstances mentioned, "a NULLITY.

"IT IS THE DUTY OF THE CORPORATION TO IMPOSE AND COL- "LECT THE TAXES IN ALL RESPECTS, AS IF THE SECOND STATUTE "HAD NOT BEEN PASSED.

"If it does not perform this duty, a mandamus will lie to "compel it."

We, accordingly, on behalf of said Bondholders, now claim a compliance with that requirement, a non-observance of which, may imperil the rights of the City of New Orleans and your own official sureties.

It is unnecessary to do more than remind your Hon. Body, that all the obligations of the late City of New Orleans and of the Council thereof, have been imposed upon the present City of New Orleans and the Council thereof, by the Charter of 1870. (Sec. 34, p. 44).

Very respectfully,

J. A. CAMPBELL,

E. BERMUDEZ,

Attorneys.

New Orleans, December 22d, 1876.

New Orleans, December 23d, 1876.

The undersigned testifies that he served this day a duplicate original of the document on the reverse hereof, on the

Mayor and the Administrators of the City of New Orleans, and on the Secretary of the Council of said city as follows:

1°. On E. Pilsbury, Mayor, through E. L. Bower, Chief Clerk.

2°. J. C. Denis, Administrator of Finance, personally.

3°. Charles Cavanac, Administrator of Commerce, through Jas. LaBarre, Chief Clerk.

4°. R. E. Diamond, Administrator of Police, personally.

5°. John E. Rengstorff, Administrator of Assessments, personally.

6°. Jas. D. Edwards, Administrator of Water Works and Public Buildings, through A. S. Audler, Clerk.

7°. J. C. Brown, Administrator of Public Accounts, through W. C. Guethen, Chief Clerk.

8°. Thos. G. Rapier, Secretary of the City Council, personally.

9°. J. McCaffrey, Administrator of Improvements, personally.

JULES BERMUDEZ.

MEMORIAL.

Filed January 21st, 1878.

To the Hon. the Mayor and Administrators of the City of New Orleans, composing the Council of said City and City of New Orleans:

GENTLEMEN:—Representing as we do, Holders for about a million and a half of the Bonds of the City of New Orleans, known as the CONSOLIDATED CITY BONDS of 1852, and all the matured and unpaid coupons thereof,

We respectfully invite the attention of your Hon. Body to Section 37 of the Consolidation Act or Charter of 1852, (Session Acts, p. 53), and to Sec. 5 of the supplemental act thereto, annexing the City of Lafayette, (p. 56), which, among other matters, provide:

That the Council shall, annually, in the month of January, pass an ordinance to raise the sum of six hundred and fifty thousand dollars, by a special tax on real estate, to be called the CONSOLIDATED LOAN TAX, and that *all ordinances, resolutions or other acts passed by said Council, after the first of January in each year, shall be null and void, unless the ordinance imposing the consolidation loan tax,* SHALL HAVE BEEN PREVIOUSLY PASSED.

In connection with this subject, we submit to your consideration, that the Supreme Court of the United States has decided in the case of VAN HOFFMAN vs. CITY OF QUINCY, of undoubted authority, (see 4 Wallace Report, p. 535), that:

"Where a statute has authorized a municipal corporation to "issue bonds and to exercise the power of local taxation, in "order to pay them, and persons have bought and paid "value for Bonds, issued accordingly, the power of taxation "thus given *is a contract*, within the meaning of the Constitu- "tion, and cannot be withdrawn, until the contract is satisfied. "The State and the Corporation, in such a case, are equally "bound.

"A subsequently passed Statute which repeals or restricts the "power of taxation so previously given, is, in so far as it affects "Bonds bought and held under the circumstances mentioned, "a NULLITY.

"IT IS THE DUTY OF THE CORPORATION TO IMPOSE AND COL- "LECT THE TAXES IN ALL RESPECTS, AS IF THE SECOND STATUTE "HAD NOT BEEN PASSED.

"If it does not perform this duty, a mandamus will lie to "compel it."

We, accordingly, on behalf of said Bondholders, now claim a compliance with that requirement, by the levy of a special tax for each of the years past for which no such tax was imposed i. e. 1874, 1875, 1876, 1877, and for the coming year 1878, by distinct assessment for each year; a non-observance of which, may imperil the rights of the City of New Orleans and your own official sureties.

It is unnecessary to do more than remind your Hon. Body, that all the obligations of the late City of New Orleans and of the Council thereof, have been imposed upon the present City of New Orleans and the Council thereof, by the Charter of 1870. (Sec. 34, p. 44.)

Very respectfully,

J. A. CAMPBELL,
E. BERMUDEZ,

Attorneys.

New Orleans, December 27th, 1877.

United States of America, State of Louisiana, City of New Orleans.

Be it known, that on this 20th day of December, eighteen hundred and seventy-seven, I, the undersigned notary, for the Parish of Orleans, have served duplicates of the foregoing instruments, one, on Hon. E. Pilsbury, as Mayor of the City of New Orleans, another on the City of New Orleans, through said Mayor in person, another, on J. C. Denis, Administrator of Finance in person, another, on J. G. Brown, Administrator of Accounts, by leaving the same at his office in the City Hall, in this city, he being absent therefrom at the time of service in the hands of his chief clerk, another, on John McCaffrey, Administrator of Improvements in person, another, on J. D. Edwards, Administrator of Water Works, at his office, in said City Hall, by leaving the same, he being absent at the time of service in the hands of Edw. Keena, his clerk, another, on Charles Cavanac, Administrator of Commerce in person, another, on Robt. E. Diamond, Administrator of Police in person, and another, on J. E. Rengstorff, Administrator of Assessments in person; all the aforesaid personal services having been made on said officers, at their respective offices, at the City Hall, in the City of New Orleans.

In faith whereof, I hereunto impress my official seal and attach my official signature this 20th day of December, 1877.

CHAS. T. SONIAT,

Notary Public.

Filed January 21st, 1878.

STATEMENT OF 613 N. O. CITY, 6% CONSOLIDATED BONDS ISSUED IN VIRTUE OF THE LAW OF 1852, HELD AND OWNED BY THE SOUTHERN BANK.

Letter	A,	577	Bonds	issued,	July 1st, 1852.
"	"	6	"	"	June 1st, 1854.
"	G,	13	"	"	May 1st, 1856.
"	I,	17	"	"	July 1st, 1856.
		613.			

Affidavit.

Thomas Layton, duly sworn says, that he is the President of the Southern Bank, and that said Bank holds and owns six hundred and thirteen bonds issued by the City of New Orleans, under Sec. 37 of Act No. 71, approved February 23d, 1852, as amended and mentioned in the petition in the case of the State ex rel., said Bank vs. E. Pilsbury, Mayor, et al. before the Third District Court of this city, No. 25,072 of its docket, and that said bonds above substantially mentioned are more specifically described in accompanying form exhibiting.

THOMAS LAYTON.

Sworn and subscribed before me,
this 21st January, 1878.

CHAS. T. SONIAT,
Notary Public.

Letter A—577 Consolidated Bonds, dated July 1st, 1852, payable forty years after date.

2109, 2110, 2111, 2112	4
2135, 2145, 2151, 2162, 2171	18
2185, 2205, 2372, 2374, 2377	26
2455, 2461, 2476, 2483	15
2485, 2486, 2487, 2497	4
2508, 2515, 2526, 2532	15
2535, 2547, 2744, 2753	23
2776, 2778, 2784, 2786	9
2839, 2848, 2851, 2854	14
2856, 2857, 3227	3

3231, 3246, 3297, 3298	18
3316, 3321, 3389, 3396	14
3474, 3475, 3477, 3478	4
3479, 3517, 3518, 3623	108
3629, 3707, 3858, 4506	81
4761, 4764, 4768, 4770	5
4787, 4789, 4816, 4820	12
4822, 4825, 4842, 4854	17
4869, 4870, 4887	3
4909, 4958, 5167	3
5289, 5292, 5757, 5758	6
5760, 5764, 4855, 4865	16
4876, 4884, 4888	10
4901, 4908, 5001	9
5152, 5153, 5154	3
5190, 5193, 5293, 5304	16
5393, 5432, 5434, 5629, 5632	8
5713, 5734, 5736, 5739	26
5750, 5756, 5759	8
5765, 5771	7
497, 498, 2564	3
4782, 4785, 1518	5
2023, 2024, 2026	3
2028, 3197, 3200	5
3361, 3365, 3491, 4141	7
4209, 4275, 4359	3
4361, 4362, 4364	3
4436, 4440, 4000, 4569	7
4778, 4781, 4975, 4984	14
5477, 5403, 5404, 5591	4
5592, 5697, 5698	3
5704, 5705, 5712, 5772	4
5773, 5774, 5775	3
2767, 3257, 3261, 3262	4
3258, 2206, 2484, 2463	4

577

Letter A—6 Consolidated Bonds issued June 1st, 1854.

5912, 5921, 5979.....

5920, 5929, 5984.....

Letter G—13 Consolidated Bonds issued May 1st, 1856.

98, 100, 101, 102, 103.....

104, 105, 106, 107, 108.....

109, 145, 195.....

Letter I—17 Consolidated Bonds issued July 1st, 1856.

117, 156, 142, 144, 298.....

145, 146, 147, 153, 200.....

311, 312, 315, 316, 317.....

318, 319.....

Filed January 14th, 1878.

State ex rel., Southern Bank vs. Ed. Pilsbury, Mayor, } Third District Court, for the Parish of Orleans. No. 25072.

On motion of counsel for relator, it is ordered that the words: "*that all other obligations issued be annulled, if found to have been issued without authority,*" found in the prayer of the petition herein, be stricken therefrom and the suit discontinued to that extent.

RECORD IN THE CASE OF ROSALIE MAENHAUT, ET AL.

VS.

THE CITY OF NEW ORLEANS, ET AL.

No. 7423.

THE UNITED STATES OF AMERICA,

District of Louisiana.

To the Honorable the Judges of the Circuit Court for the District aforesaid:

Rosalie Maenhaut and Louise Maenhaut, who are subjects of the king of Belgium, and reside therein; Charles Ferdinand Rodewald, who is a subject of the Queen of Great Britain and

Ireland, and resides therein; and James Roosevelt, who is a citizen of the State of New York, and resides therein, bring their bill on the Chancery side of the said court for themselves respectively and for all other persons who hold the securities hereinafter described, and under the same conditions as themselves and have a common interest, who will become parties to this suit and contribute to its cost and expense, against the defendants, to-wit: The City of New Orleans, a municipal corporation existing within and established by Charter from the State of Louisiana; Charles J. Leeds, the Mayor of said City; Edward Pillsbury, the Administrator of Finance, under the Charter of said City; James G. Brown, Administrator of Public Accounts, under the same Charter, each of whom is a citizen of the State of Louisiana; also Louisiana National Bank, New Orleans Canal and Banking Company, Hibernia National Bank, Levee Steam Cotton Press Company, Eager Ellerman & Co., Wm. Van Norden, all of whom are corporations created by or citizens of the State of Louisiana, resident in and domiciliated in said State.

The said plaintiffs complain and say, they, severally, hold and own seven bonds for the sum of One Thousand Dollars, each, of the value of One Thousand Dollars, each, which the City of New Orleans, the said defendant, executed and issued under the authority conferred in the 37 Section of an Act of the General Assembly, of Louisiana, approved, 23d February, 1852, and promulgated as Act No. 71, entitled "An Act to Consolidate the City of New Orleans, and provide for the Government and Administration of its Affairs." The complainants say that their bonds bear an interest of six per cent. per annum, payable semi-annually, according to coupons, and were payable forty years after the date of their issue and form a portion of the consolidated stock which was provided for, and according to the terms of the 37 Section of the Act of the General Assembly aforesaid. That during the year 1852, and subsequently there were issued of these bonds about ten millions of dollars in the settlement of the debts and obligations described in the said Act by the General As-

sembly aforesaid. The bonds were negotiable securities and by reason of the restrictions imposed by the Act providing for the issue and the clear and comprehensive provisions for the payment of the interest, the gradual reduction of the number through a sinking fund, the bonds were negotiated at and above par value, and have been distributed on the markets of Europe and of the United States in due course of business, as a secure, permanent and trustworthy investment, and persons and corporations have invested their moneys in the said bonds with unfeigned confidence until the happening of the events hereinafter setforth. This confidence had a legitimate foundation in the terms of the Section 37 above referred to, and to the maintenance of which the public faith of the State and City was pledged.

2. The complainants further say that by the said section of the Act aforesaid, the debt of the three municipalities, into which the City had been subdivided for government, was charged upon the City of New Orleans as then organized. The Mayor, Comptroller and Treasurer and the Chairman of the Finance Committees of the two boards of the Common Council, were constituted Commissioners of the consolidated debt of New Orleans. These were empowered to issue bonds of the City of New Orleans, payable not longer than forty years after date, with semi-annual coupons of interest, to be exchanged for the various forms of debt and obligation of the City and municipalities.

There were to be an apportionment of this debt among the municipalities according to a rule stated in the said section. The said Act, No. 71 and the Act No. 72 supplementary thereto, required the Common Council, annually, in the month of January, to pass an ordinance to raise the sum of Six Hundred and Fifty Thousand Dollars, *by a special tax on real estate and slaves*, to be called the consolidated loan tax, all ordinances, resolutions, or other acts passed by the said Council after the first day of January of every year, unless the ordinance imposing the consolidated loan tax shall have been passed, were declared to be null and void.

No obligation or evidence of debt of any description whatever, except those authorized in the said Act, was to be issued by the City of New Orleans, or under its authority; nor should any loan be contracted unless the same were authorized by a vote of the majority of the qualified voters of the city, in the manner designated in the said Section of the Act aforesaid; nor should an ordinance creating a debt or a loan be valid unless for ome single work or object distinctly specified therein, and besides, should provide the ways and means for the punctual payment of the interest running during the whole time for which the debt or loan shall be contracted, and for the full and punctual payment of the capital borrowed or debt incurred which was to be irrepealable during the whole term of the indebtedness.

All of which will more particularly appear from the terms of the Section of the Act aforesaid, to which reference is made as a part of this bill.

3. The complainants further say, the pledges contained in the Section of the Act aforesaid were of a nature to inspire confidence in the value of the bonds aforesaid, and in the punctual performance of the obligation to redeem them. The very existence of municipal government was staked as a guarantee; for the Act declares that no ordinance, resolution or other act of the City Council, the legislative branch of the government, should be valid till a tax had been imposed to pay the interest. The surplus remaining at the end of each year, was pledged to the redemption of a portion of the bonds, after the interest and the cost of management were paid, and the debt has been greatly reduced by such application since 1852. No other obligations or evidence of debt were to be issued, but those provided for in that act. These impediments for creating debts and making loans under ordinary circumstances, seemed to be unsurmountable. There was every inducement for confidence in and credit to a city which was thus restrained from reckless and profligate expenditures by removing the faculty of issuing obligations or borrowing money, and from tempting schemes for improvement and work.

It was in the prospect of these pledges, and in the faith in this stability, that the consolidated debt of the City of New Orleans was created, and the bonds sold in Europe at a premium.

The complainants further complain and say, that the debt of the city was not increased by the issue of bonds or obligations, other than those comprehended under the consolidated debt for the year 1852, until the first of January, 1869, except under Acts Nos. 108, 109, 110, approved 15th March, 1854. These Acts provide for the issue of bonds to pay for subscriptions of stock of three separate railroad companies. They require, in each instance, an ordinance having a specific object to be submitted to the qualified voters of the city, in a manner to conform to the 37 section of the Act of 1852, before mentioned, and in each case a provision is made for the payment of the principal and the interest.

The complainants shall not in this suit dispute the validity of the bonds issued under these Acts, although perhaps a fair construction of the Act of 1852, would be that bonds similar to these described in that Act as consolidated stock, were inhibited, and that the issue of new bonds like the railroad bonds, did impair the credit of the consolidated stock. These Acts, may perhaps, be vindicated as creating a debt or loan under the last clause of the Act of 1852, and in the manner contemplated by the provisions of that portion of that Act.

5. The complainants further say, that the issue of bonds, the first of January, 1869, was made to purchase the Water Works, and that the provision was made in the year 1834, prior to the Act of 1852, and this debt was not included under the provision of the Act of 1852, all other and subsequent issues of bonds made by the City of New Orleans, violate the restrictions impose in the*d* Act of 1852. The Act No. 52, of the Acts of 1868, p. 62, allowed an issue of $1,000,000 of bonds, bearing interest not exceeding 10 per cent., of which issue there are bonds now outstanding, amounting to $37,650; under Act No. 49, p. 45, of 1869, there was a loan of $5,000,000 allowed to be made for 7 per

cent., and bonds are outstanding of that issue amounting to $2,849,500.

6. Your orators and oratrixes further complain and say that at the extra session of the Legislature, in 1870, the form of government of the City of New Orleans was changed. The Act of 1852, before mentioned was repealed, though some of the clauses and sections of the Act were retained. A new consolidated debt was created, new issues of bonds were authorized, and under that Act bonds bearing 7 per cent. interest, to the amount of $3,000,000 are now outstanding. But this did not satisfy the appetite for new bonds. In 1871, the Act No. 48, Sec. 10, made a provision for the improving, paving and repairing the streets, and this to be paid for in bonds, there is outstanding $455,450, under this Act. None of these legislative acts, and no ordinance of the city were submitted in reference to them; the Act No. 100, p. 233, of 1871, provided an issue of bonds for the unsettled floating debt and estimated deficiencies of the revenue for the years 1870 and 1871. On the face of the Act there is a deficiency acknowledged of $1,766,848; there is outstanding under this Act $1,543,600.

Subsequently, by the Act No. 73, p. 126, of 1872, the new consolidated debt was organized under an Act "to authorize the funding of the floating debt, to consolidate, limit and provide for the debt of the City of New Orleans, principal and interest, to authorize a tax for the support of the city government." The bonds which have been issued under this Act and are outstanding are $4,142,000; and beside these, there are wharf bonds, $702,000, and a vast debt in the form of certificates, warrants and other forms which a beggarly government has invented to obtain labor, service and money for their crying demands. The bonded debt of the city is set down at some twenty-two or twenty-three millions of dollars, and the other form of debt to several hundreds of thousands of dollars.

7. The complainants further allege and say, that a simple statement of the number of the Acts and number of the bonds issued between 1869 and the date of the filing of this bill suffi-

ciently establishes the prodigality, extravagance and profligacy of the State and City Government.

There is displayed by both an eager disposition to get bonds and money at any rate of interest. The sober calculations upon which the finances of a State or a city should be regulated, with the solid maxims and prudent courses by which such maxims are applied were abandoned and scorned. Not only this, but the solemn pledges which had been incorporated into the laws and tendered to creditors and to capitalists as obligations never to be revoked, were neglected and despised. By a reference to the first of the series of these acts, passed in 1868, the object of the act was to enable the city to meet an existing pressure in the financial condition of the city government. The act, approved 27th February, 1869, was passed to relieve the city from the currency known as "City Notes," a portion of which had been created and compelled by the orders of the military commanders during the late civil war, but a large portion merely to meet current expenses. But this act recognized the obligation of the Act of 1852, by a reference to it, and also by re-enacting that the City of New Orleans shall not be authorized to issue any other bonds, notes, or other evidences of debt, except warrants for the payment of money actually in the treasury of the city until the whole debt, which is due, shall have been paid, and any bond, note, or other evidence, of debt, which might be issued, were declared to be null. These two acts seem to have been made under some opinion that there was a dispensing power in the military department during the war and that the debt ordered should be paid, and that any shifts or device was proper and on these suppositions the Acts of 1868 and 1869 were passed.

8. The act passed the 16th March, 1870, reorganized the city government. It deprived the people of all control over the election of their officers and abolished the Council which had been chosen, and placed the whole under appointees of the Governor. All charge of the police of the city was withdrawn at the same session of the Legislature and placed under a board created for the purpose. The Mayor and the Administrators of

Finance and Public Accounts were appointed Commissioners of the floating debt and these were authorized to certify to indebtedness and to issue bonds therefor. The act of 1852 was repealed by this act and all the amendments thereto were repealed, together with the eighth section of the act of 1869, which prohibited the issue of bonds, notes and evidences of indebtedness, and these such should be void. From this enactment of this vicious charter all restraints upon the profligacy and corruption of the government have been removed and as will be seen the funding of floating debts and the issue of bonds for it has been a regular and standing concern of legislation and of administration of the city as the purpose of this charter and contemporaneous acts, was to deprive the citizens of their rights to self-government, of all control over their affairs, and to tyrannize over them by Metropolitan Police and a uniformed militia, that clause which required the consent of the people to every new loan or debt, in the manner provided in the act of 1852 was annulled and the act which provided for such a consultation rescinded. So, too, the restraints upon the city government to create debts or to issue obligations. A Mayor and two of the Administrators became the managers of the debt and all taxes were imposed without any sanction from the tax-payers.

9. The complainants further say that the irresponsible and illegal measures which have been brought to the notice of the court had their legitimate consummation in an act of 1874, No. 53, p 92, entitled "To postpone the levy and collection by the City of New Orleans of a tax for sinking fund for purchase of its bonds; to authorize the Administrators to modify the last budget and tax levy and to repeal conflicting laws and penalties." Approved 12th March, 1874.

By this act the Administrators were dispensed until December, 1876, from making the collection of taxes corresponding to the obligations of the charter of 1852 in reference to the sinking fund provided in that act—that the act was not to hinder the collection of interest and that the consolidated debt was recognized in its integrity and that the rights of the bond-

holders were not denied and that this was only designed to afford temporary relief.

The complainants aver that this act does deny and impair the rights of the holders of the consolidated bonds of 1852. It undertakes to exonerate the Administrators from the obligation to pass an ordinance in January of every year for the collection of a specific sum sufficient to pay interest and to withdraw some of the incumbrance on the sinking fund which is a constant quantity and rendered more valuable as security each successive year, by the payment of some of the bonds. This paramount and primal duty of each board was the most beneficial element in the security afforded. When this is removed all the security is lost. When these bonds were taken it was with the distinct declaration that this security should exist. That no other debt should be made without the consent of the qualified voters. Under that condition the bonds retained their value till 1869 when the downward career of acknowledging and funding every sort of claim commenced. At this time the consolidated stock is worth but fifty cents on the dollar.

Had the legislation of 1852 been maintained with fidelity the bonds would be as valuable as in 1852. The next stage in the progress will be the neglect to pay the interest on the bonds or any of them. The bond-holders have been delayed repeatedly in the collection. It is fully understood that there will be a failure to pay the instalment of interest due in July next. Thus the entire contract on the part of the city and of the State will be broken. The deficiency in the sinking fund amounts now to the sum of one million of dollars and upwards, and the city of New Orleans has from time to time misapplied the fund prior to the licensed postponement of its collection in 1874. The effect of these measures has been to discredit the consolidated stock, and to prevent its sale and negotiation in commercial markets upon any equal terms. In addition to this the corporate authorities and citizens have attempted to procure the passage of an act to reduce the debt of the city by terms of

composition and respite upon a confession of insolvency and to place them upon the same footing.

11. Your oratrixes and orators further complain and say, that it is obvious this desperate condition in the fortunes of the city originates in the entire disregard of the restraints imposed by the 37th section of the Act of 1852, by the State and City, and which the City, as well as the State, was pledged to the holders of the consolidated stock to maintain during the whole term of the existence of that debt.

Prodigality, waste, corruption and consequent insolvency have grown up from the ability to borrow and to deal upon credit unrestricted by legal or moral restraints.

This ability was communicated by the revolutionary enactment approved 16th March, 1870. Your oratrixes and orators pronounce that the said enactment, in its operation upon the 37th section, impaired the obligation of the contract with your orators and oratrixes, and other holders of the consolidated stock, issued under the Act of 1852, and therein embodied; and that the grant of authority to the Administrators in that Act and the Acts before referred to, subsequently passed, and the issues of bonds and evidences of debt under them as aforesaid, and the funding of illegal claims and demands against the city by the corporate authorities contrary to the terms of the Act, and the entire neglect, by State and City, of the terms of the contract aforesaid, infringe the rights of your oratrixes and orators as well as those of the holders of bonds standing in the same condition as those of the complainants as secured in the Constitution and laws of the State, and especially as secured by the 10th section of the 1st Article, and of the 1st section of the 14th Amendment to the Constitution of the United States, and that the said issues of bonds and evidences of debt are illegal and inoperative.

12. The complainants further say, that there is outstanding of the consolidated stock, Four Million Three Hundred and Eighty Thousand Dollars and upwards.

The holders of the bonds are widely dispersed over the

United States and in Europe, and are for the most part unknown to your oratrixes and orators, although about one million of the bonds held by bona fide holders are represented in this suit by the consent of the owners; but these and other owners are numerous and their joinder herein would embarrass the suit even if they had all consented.

This suit is brought to maintain a right common to all, and the relief sought is desired by those consulted and is essential for all, and the plaintiffs consent that all who will come in on the usual terms may be made parties hereto and they will amend the bill for that object.

13. Your oratrixes and orators further complain and say that besides the City of New Orleans, the Mayor and Administrators named in the premises of the bill, they have selected persons as defendants who hold some of the bonds issued since the act of 1852, was repealed, and all the provisions of the 37th section disregarded. These bonds were not sanctioned by any ordinance submitted to the qualified voters of the city, nor supported by any security for the payment of principal and interest. The debt or obligation they represent was made in open violation of the laws in force at the date of the funding act, and especially in violation of the terms of the charter of 1852.

These holders claim an equality with your oratrixes and orators and the holders of the consolidated debt of 1852. They discuss new projects for funding their issues, and complacently look forward to a time when the face of the tax-payer will be ground by the publican to find money to pay the interest on these illegal issues. At the session of the Legislature in April, 1875, there were plans submitted apparently to relieve the citizens from the grievous burdens which a profligate, wasteful, illegal administration of the affairs of the city since the first of January, 1869, have occasioned, but really to cover up the fact that ten or eleven millions of actual debt has been, without cause, consideration or legality, enacted by throwing all the bonds into the same hodge-podge and destroying the identity of all.

The complainants insist that under the terms of the contract made with them and others associated with them, that this would not be equitable. That by that contract, they are entitled to a specific and separate tax on the real estate of the City, as the first act of legal administration in January of each year, and that what is not employed by that tax for interest upon current coupons shall be applied to the redemption of the bonds, and that these measures to postpone the collection of the sinking fund and refuse to pay interest, are contrary to equity and good conscience and tend to the manifest wrong and injury of each and all of the holders of the bonds issued under the act of the General Assembly of A. D. 1852, before mentioned, and especially of the complainants of this bill. In tender consideration whereof, your oratrixes and orators aforesaid, pray that the said several parties before mentioned in the premises of this bill may be made defendants to this bill, to the end that they may, if they can, show why the complainants should not have the relief they pray for, and that they may upon their oaths, and according to the utmost and best of their knowledge, information and belief, full, true and perfect answer make to the statements, allegations and charges as they can; and your oratrixes and orators pray of your Honors to declare that the bondholders of the consolidated stock issued under the 37th section of the Act of 1852, are entitled to a substantial compliance with the terms and conditions of the 37th section of the Act of 1852, and that the said Act is in force for the security, and to provide for the credit and payment of the bonds issued by the City of New Orleans, for semi-annual interest thereon at maturity, and the creation of a sinking fund, as specified in the terms of that Act, and that the General Assembly of the State of Louisiana was not entitled or competent to abrogate or to impair the securities so created, to the prejudice of the holders of the bonds.

2. That your Honors would decree that the first and paramount duty of the corporate authorities in each year before any act be done, is to provide adequately the sum of six hundred and

fifty thousand dollars for the payment of the principal and interest of the said bonds according to the said Acts of 1852, and that neither the State nor the City Government is entitled to destroy or to displace the funds thus provided.

3. That there be an account of the deficiency in the application of that fund and that a decree be made for the restitution of any and all sums which have been subtracted from it by state or corporate authority, and that it be at once applied to the redemption of the bonds of 1852.

4. That the city be decreed to pay the interest in arrears, and to give priority to the debt over the debts subsequently created in opposition and contradiction of the terms of the contract with the bondholders aforesaid The plaintiffs pray for an injunction to be directed to the said city to enjoin and to restrain them from in any manner paying the bonds issued since the first day of January, 1869, under the Acts of the General Assembly, made in violation of the contract with the holders of the bonds, and without the consent of the qualified voters of the city, and that all payments for such bonds be postponed in favor of the claims of the plaintiffs, because the said debts were a fraud as against them.

5. The plaintiffs pray that writs of subpœna may be issued according to the practice of the Court, and the established in regard thereto by the Supreme Court of the United States, and for such other and further relief as will comport with equity and good conscience.

JOHN A. CAMPBELL,
EDWARD BERMUDEZ,
Solicitors for Complainants.

CIRCUIT COURT OF THE UNITED STATES,

STATE OF LOUISIANA.

To the Honorable the Judge of the Circuit Court of the United States for the Fifth Judicial Circuit and District aforesaid:

Rosalie Maenhaut and Louise Maenhaut, who are subjects of

the King of Belgium, Charles F. Rodewald, who is a subject of the Queen of Great Britain; and James A. Roosevelt, who is a citizen of the State of New York, represent to your Honors;

That in the month of May last, they filed in the Court aforesaid, a bill in chancery against the City of New Orleans; the Mayor of the city, Charles J. Leeds; Edward Pilsbury, the Administrator of Finance; James G. Brown, the Administrator of Public Accounts, all of whom were and are citizens of Louisiana, and also against the Louisiana National Bank, New Orleans Canal and Banking Company, Hibernia National Bank, Levee Steam Cotton Press, Eager, Ellerman & Co., and W. Van Norden, corporations existing in said State, or citizens thereof, and that Writs of Subpœna have been served on them.

Your orators represented in the said bill, that they were holders of bonds, issued under an Act of the Legislature of Louisiana, approved 23d February, 1852, entitled: "An Act to consolidate the City of New Orleans, and provide for the government and administration of its affairs," and that there is outstanding of this issue $4,132,000; and that all the holders have a common interest, and that the bill was filed in behalf of all, and that all were permitted to be parties plaintiffs on the usual terms;

2.—The bill set forth as part of the bill, the sections of the said Act, relative to the consolidation of the debt of the City, in the second paragraph of the bill. The Mayor, Comptroller, Treasurer and Chairman of the Finance Committee, of the two boards were constituted commissioners of the consolidated debt of New Orleans;—they were to issue bonds of the City, having forty years to run, with coupons of semi-annual interest, at six per cent. per annum, to be exchanged for the various forms of the City debt. This debt was to be apportioned among the municipalities that had composed, and were now consolidated into the City of New Orleans. The Act required the Common Council, annually, in the month of January, to pass an ordinance to raise the sum of $650,000, by a special tax, on real estate and slaves, to be called the Consolidated Loan Tax—all

ordinances, resolutions or other acts done by the Council after the first day of January, of every year, unless this ordinance were previously passed, were declared to be null and void;

Besides this provision, it was contracted that no obligation, or evidence of debt, of any description whatever, except those authorized by the said Act was to be issued by the City of New Orleans, or under its authority, nor should any loan be contracted, unless the same were authorized by a vote of the qualified voters of the City, in the manner designated in the Act; nor should an ordinance creating a debt or a loan be valid unless for some single work, or object distinctly specified therein, and, besides, should provide the ways and means for the punctual payment of the interest running during the whole time, for which the debt or loan should be contracted, and for the full and punctual payment of the capital borrowed, or debt incurred during the whole term of indebtedness;

Your orators and oratrixes further represented that this issue of bonds was circulated upon this pledge or security, and had been for the most of the period in the highest condition of credit;

But that in 1869, and for several successive years, the guarantees contained in this act had been impaired and broken by a series of legislative acts and municipal ordinances and acts, whereby the credit of the City had been greatly reduced and its prosperity diminished. That the City had issued bonds to the amount of ten million of dollars and upwards without having observed any of the requirements of this Act. That the provision in the Act of 1852 had been postponed, that the funds collected had been perverted to other objects, and that there were already in progress arrangements to disregard them still further;

All of which will more fully appear by a reference to the bill.

Your orators and oratrixes, by way of supplement to their bill aforesaid, complain and say that the City of New Orleans, on the 14th of July, 1875, and since the bill was filed, adopted

an Ordinance which has been promulgated in the public journal, and is as follows:

Mayoralty of New Orleans, City Hall, July 14, 1875.

[No. 3190—Administration Series.]

Be it ordained, That the Commissioners of the Consolidated Debt be and are hereby authorized to pay, within a delay not exceeding ten days, fifty per cent. of the following past due Interest Coupons, and that such pro rata payments be continued out of all interest collections up to January, 1876; provided, that the holders of such coupons shall indicate their acceptance of this arrangement by their respective signatures at the time of payment. The said coupons shall be stamped thus, Half "paid":

Consolidated, 1852, due July, 1875.
Railroad up to July, 1875.
Pontchartrain Railroad, due July, 1875.
Street Improvement, due February, 1875.
Water Works, due July, 1875.
Seven per cent. currency, 1869, due March, 1875.
Seven per cent. currency, 1870, due June, 1875.
Consolidated, gold, General Series, due January, 1875.
Carrollton, due November, 1874.

Adopted by the Council of City of New Orleans, July 13, 1875.
Yeas—Brown, Bouny, Burke, Landry, McCarthy, Pilsbury.
A true copy: J. H. HARDY, *Secretary*.
CHARLES J. LEEDS, *Mayor*.

The paper to be signed by the coupon holders under the Ordinance on receipt of one-half, is as follows:

"We, the undersigned, holders of City Bonds, hereby acquiesce in and approve Ordinance No. 3190 of the City Council, providing for the payment of fifty per cent. of the interest collected, and to be collected, up to the first of January, 1876, the balance to be used for the general relief of the city government, reserving our right to be hereafter paid by the city the balance due on said coupons."

The claim of your orators and oratrixes is, that under the Act of 1852 and the subsequent acts, the holders of the issue of bonds under that Act are entitled, before every other creditor, to the payment of six hundred and fifty thousand dollars per annum, for the payment of the interest on that issue of bonds, and to create a sinking fund;

This issue of bonds evinces the oldest debt contracted by the City. The City was prohibited from creating any obligations or evidence of debt, save such as that Act allowed of. The payment of this debt was provided for, by a requirement that the first and paramount duty of every Council of the City should be to levy a tax adequate to the payment of the interest and a portion of the principal.

But this ordinance disregards the enactment of 1852, and the enactments that follow which retain this obligation;

It deprives your orators and all other holders of these bonds of the funds specifically appropriated to the payment of the interest and sinking fund. The Ordinance imposes an illegal and fraudulent condition upon the holders of the coupons, for each holder is required to take one-half of the coupon, and to relinquish his claim on the tax collected under the law for the payment of interest, so that the same may go into the City Treasury for municipal objects; and your orators and oratrixes aver that no payment has been made unto them for the interest due July 1st, 1875, on the said bonds;

Your orators and oratrixes further complain and say, that this Ordinance furnishes evidence of the disregard of the promises and pledges contained in the act 1852, as an inducement for creditors and capitalists to take these bonds, and of an ultimate purpose to discard them all.

This evidence is fortified by another Ordinance of a more recent date. This Ordinance provides for the collection of the arrearages of taxes in what is termed the floating debt of the City. A large amount of these taxes was levied to secure the bonded debt of the City upon specific pledges of the same as security for the payment of the said bonds. During every year the City Council was required to raise the sum of six hundred and fifty thousand dollars to pay the principal and interest on the bonds issued under the Act of 1852. In the bill heretofore filed it was averred that there had been a deficiency in the sinking fund provided for by the Act of 1852, of upwards of a million of dollars.

The Ordinance of 27th October, 1875, is framed with the distinct object, and will have no other effect than to prevent that fund from being renewed and restored.

This Ordinance is as follows:

Mayoralty of New Orleans, City Hall, October 27, 1875.

[No. 3282—Administration Series.]

An ordinance Providing the manner in which certain past due indebtedness of the city may be received in payment of back taxes.

Whereas, It has become necessary to provide the means required to retire the outstanding floating obligation of the city; and

Whereas, The back taxes, now due the city, are more than sufficient in amount to meet said obligations;

Be it ordained by the Council of the City of New Orleans, that from and after the passage of this ordinance payments of city taxes from 1860 to 1874, inclusive, may be made as follows:

Taxes of 1860 to 1871, inclusive, in scrip and interest coupons, stamped "half paid." Interest and costs advanced by the city remitted.

Tax of 1873, fifty cents in cash; $1.50 in interest coupons stamped "half paid," $1 in scrip; and for interest and costs advanced by the city, one-half in cash and one-half paid interest coupons.

Tax of 1874, $1.75 in cash, and seventy-five cents, with accrued interest and costs, advanced by the city in ordinances of 1874, from Nos. 2632 to 2697, inclusive.

Be it further ordained, etc., That the provisions of this ordinance shall not operate to the benefit, or be taken advantage of by any one who has not paid his city tax for 1875.

Be it further ordained, etc., That by the word scrip, as used in this ordinance, is meant unpaid ordinances, registered judgments and transfers of same, appropriation and five-eights tax excess certificates, Metropolitan Police, criminal jury, coroners' and tax warrants.

Be it further ordained, etc., That this ordinance shall be repealable at the pleasure of the Council.

Adopted by the Council of City of New Orleans, October 26, 1875.

Yeas—Bertoli, Brown, Burke, Landry, McCarty, Pilsbury.

CHARLES J. LEEDS, *Mayor.*

A true copy: J. H. HARDY, *Secretary.*

Your orators and oratrixes further complain and say, that under the authority granted by the Act of 1852, aforesaid, the City Council of New Orleans has collected, during the present year, moneys, nearly sufficient to pay the interest due on the

Consolidated debt for July last and January next, and has deposited them in the Louisiana National Bank, one of the Defendants, to this Bill; that the said Defendant was appointed by the said Council the Fiscal Agent of the said City, under an Act of the General Assembly No. 73, of the Acts of 1872, and approved 26th April, 1872, during that year and for the term of three years, to terminate the 31st December next; and the said Bank has continued to be such fiscal agent, until November 1874, since which month, it assumes to be discharged from the duties and obligations of that office;

That, while the Fiscal Agent, the moneys were held apart from the control of the City Council and their officers, and was applied conformably to the Act under which it was received, and that the said Fiscal Agent paid to the holders of the Coupons on the Bonds, the amounts due to them upon presentation of the same; but that, since November, 1874, the moneys are deposited to the credit of the corporation, and is subject to their check and to the directions of their council;

The said Bank deals with the money deposited, as if it belonged to the city, and had not been pledged by law and by contract, to the holders of Bonds they had issued, and in satisfaction of whose demands, the collections were distinctly made from the taxpayers;

Your orators and oratrixes further complain and say, that since the filing of the original Bill, the City Council has dictated, to the said bank what application should be made of the moneys collected, and have conformed their directions so as to enforce the ordinance of the 27th July last, set forth in this supplement.

They have allowed no bondholder to participate in the payments, who did not consent to that ordinance, and have excluded a number, because they did not do so, among whom are your orators and oratrixes.

In consequence of this neglect of the law, relative to the Fiscal Agency and of the confusion of the funds, creditors of the City having claims and judgments, have sued out writs of

sequestration and garnishment, with a view to get a payment of their debts, and have put the funds in peril and controversy, and so the Bondholders are still further embarrassed. This negligent, overreaching and unfaithful conduct, your orators and oratrixes charge to have done great injury to the credit of the City, and damage to the holders of these Bonds. The depreciation, which existed when the Bill was filed, has been aggravated by their meddlesome and unfaithful administration.

Your orators and oratrixes aver that a proper case has arisen for the appointment of a Receiver by the Court, if there be not a faithful and competent Fiscal Agent appointed by the City Council, according to the law.

And your orators and oratrixes respectfully ask for an inquiry for that purpose.

Your orators and oratrixes further complain and say that the City of New Orleans has invented a scheme for abolishing the City debt as now standing, and to spread the same over for a period of fifty years, and to furnish no single holder with an obligation or acknowledgment payable any definite time, and that every holder has to depend upon the chances of a lottery for the determination of the time when any portion of his debt shall be paid.

This gambling form of determining the period when obligations shall be paid has already been practised, and the moneys in the treasury properly applicable to the debts of your orators and their associates have been thus distributed to a favored class. Your orators are compelled to the conclusion, that there is bad faith in these Acts and Ordinances, and a determinate purpose to repudiate the obligations which were issued with so many promises and guarantees of payment as are set forth in the Act of 1852, before set forth.

In tender consideration of the premises, your orators and oratrixes pray that the prayer of the original bill may be granted as prayed for, and that your Honors would restrain the corporate authorities of the City and their agents from appropriating moneys arising from the taxes to pay the interest on the bonded

debt for any other object than the payment of the said debt and interest, and especially of the issue of bonds issued under the the Act of 1852.

And that your orators would further enjoin the said City from appropriating any portion of the funds raised to pay the principal or interest of the bonded debt to the payment of any bonds or interest on bonds until the interest and sinking fund. one or both, are provided for the redemption of the interest and the principal on the bonds issued under the Acts of 1852 aforesaid.

Your orators and oratrixes further pray that the City of New Orleans be enjoined from receiving in the payment of taxes for the collection of principal and interest due or to become due on the issue of bonds under the Act of 1852, except current money of the United States, and that the same be kept apart from other moneys, as required by said Act, and paid according to the terms of the same.

Your orators and oratrixes pray for a specific execution of the laws of the said Act of 1852, for the security of the payment of said bond, and for such other and further relief as may be necessary, and according to equity and good conscience.

J. A. CAMPBELL,
E. BERMUDEZ,
Solicitors for Complainants.

In the Circuit Court of the United States, District of Louisiana.

Before the Clerk of the Circuit Court aforesaid, personally appeared, THOS. LAYTON, Esq., who being duly sworn, maketh oath and saith, that he is agent of the plaintiffs in this suit, for the purpose of collecting the interest on the bonds, and that he is familiar with all the matters of fact herein stated, and that the matters set forth in the original and supplemental bill, are true in substance and matter of fact.

THOMAS LAYTON.

Sworn to and subscribed before me, this 27th of November, 1875.

F. B. VINOT,
D'y Clerk.

Filed November 29th, 1878.

Rosalie Maenhaut et. als.	)	United States Circuit Court,
vs.	)	District of La. No. 7423.
The City of New Orleans et. als.	)	

The joint and several answers of the City of New Orleans, and of Charles J. Leeds, Mayor of said city, Edward Pilsbury, Administrator of Finance, under the charter of said city, and of James G. Brown, Administrator of Accounts, under the same charter, to the bill and supplemental bill of complaint of Rosalie Maenhaut, Louisa Maenhaut, Charles Ferdinand Rodewald and James A. Roosevelt.

1. These defendants do not admit that complainants are the bona fide holders and owners severally as alleged of seven bonds —$1000 each, issued by the said City of New Orleans under the provisions of Section 37 of the Act of the Legislature of Louisiana, No. 71, approved 23d February, 1852, entitled "An Act to Consolidate the City of New Orleans and Provide for the Government and Administration of its Affairs," but these defendants believe that the real holders and owners of said bonds is the Southern Bank, a corporation created under the laws of Louisiana, and domiciled in the said City of New Orleans, and that complainants have no interest in said bonds, other than as stockholders of said bank, of which Thomas Layton, a citizen of New Orleans is, and ever since the year 1867 has been President, and that this suit is instigated and conducted by him on behalf of said bank, which is the real owner of said bonds, and of a large amount of similar issue, in order to give this court jurisdiction of the cause, which it otherwise would not possess.

2. These defendants admit the passage of the various acts of the Legislature of the State of Louisiana referred to in said bill of complaint, the provisions of which and matters of which this court will take judicial notice, and the effect of which is matter of law.

3. These defendants admit that not only the debt of the three municipalities into which the City of New Orleans had been divided, but the debt of the general sinking fund then

existing, commonly called at that time, the old city debt, was funded by the issue of consolidated bonds by authority of section 37 of said act of 1852, and to this was subsequently added the debt of the City of Lafayette which was incorporated with the City of New Orleans by act No. 72, approved 23d February, 1852. The total amount of the consolidated debt was about seven million six hundred thousand dollars, but the amount of consolidated bonds issued under the acts of 1852, now outstanding is the sum of four millions three hundred and ninety-one thousand dollars.

4. These respondents admit the passage of the Act No. 49 of 1869, and that of the seven per cent. bonds authorized by that act, there are now outstanding about $5,554,000.85-100, but these defendants are informed, and believe, and therefore aver, that Thomas Layton, the President of the Southern Bank aforesaid, and the agent of the complainants, suggested and in part prepared said Act; and used his influence to procure its passage, and said bank, of which he is president, became Fiscal Agent under its provisions, and all the bonds issued thereunder bear on their face the signature of said Layton. This conduct precludes him and his principals, and the said Southern Bank, from questioning the legality of said bonds, besides the said Southern Bank, on the 16th November, 1875, affirmed the legality of said bonds, by the institution of a suit to enforce payment of the over-due and unpaid coupons of the same, as appears by a petition filed in the Superior District Court for the parish of Orleans, for a sequestration of the funds of the City of New Orleans on deposit with the Louisiana National Bank, which petition is sworn to by said Layton, and a copy thereof is hereto annexed as a part of the answer, and said suit which is numbered 26,848 on the docket of said Superior District Court is now pending.

5. These defendants admit the passage of the Act No. 7, approved 16th March, 1870, and the repeal by that Act of "the Act to consolidate the City of New Orleans, and to provide for the government and administration of its affairs, approved 23rd

responsibility for which these defendants in no manner assumed.

10. These defendants further aver that the premium bond scheme referred to in the supplemental bill, was suggested and adopted in consequence of the inability of the City of New Orleans to pay the interest on the bonded debt of the city, and that portion of the bonded debt which has matured; the object of the scheme was and is to reduce taxation to a limit within the ability of the people of said city to pay and to protect the interests of the bondholders; this plan was inaugurated by the present City Council, under the authority of the constitutional amendment of 1874, which, while it prohibited any increase of this city debt expressly provided for the issue of new bonds, in exchange for other bonds already issued, whether matured or not. This plan or scheme is in no sense a lottery or gambling scheme as alleged, but a system of recognized finance, familiar to and successful in nearly every city on the continent of Europe. It is now in operation in New York, and has received the endorsement of the late Governor of that State, and in some respects is in operation in this city, in an institution whose bonds are redeemed in the same manner The principle of the premium bond plan is that a certain amount of bonds is to be redeemed each year, and the determination by lot what bond shall be first paid. In carrying out this plan no monies have been used, nor is it proposed to use any monies to which complainants can set up any claim. The plan will be sustained alone by the bondholders who have accepted and may thereafter accept that form of adjustment by an exchange of bonds.

11. These respondents deny the alleged obligation on the part of the Administrators of the City of New Orleans to levy a special tax under the provisions of section 37 of the act of 1852, to pay the principal or interest on the bonds issued by authority of said act, although they have always endeavored to pay the said interest and recognize the obligation to pay the principal at maturity, and they aver that the amount of said bonds now outstanding is five millions, three hundred and ninety-one dollars, and if the complainants are intitled to any part of

the relief prayed for by them the same should be granted on terms which should operate no prejudice to the rights of all holders of similar bonds.

12. The defendants further aver that by Ordinance No. 6236 passed, the City of New Orleans was under military authority on 12th August, 1864. Notes of said city, issued as money, were issued in payment of consolidated bonds of 1852, and were declared to be convertible into consolidated bonds of $1,000 each, having forty years to run.

13. These defendants further aver that $223,000 of consolidated bonds, authorized by the act of 1872, were issued in the year 1857, and $70,000 in the year 1869, and $12,000 in the year 1868, and $367,000 in the year 1856, and $42,000 in the year 1860, and $69,000 in the year 1854, and $42,000 in the year 1864, all of which were issued without authority of law.

(Signed) B. F. JONAS, City Attorney.
SEMMES & MOTT,
Of Counsel for these Defendants.
CHAS. J. LEEDS, Mayor.
EDWARD PILSBURY,
Administrator of Finance.
J. G. BROWN,
Administrator of Accounts.

United States Circuit Court, Filed Nov. 29, 1875.

64

DECREE—MAENHAUT vs. CITY.

DECREE, *signed, entered and filed December* 21, 1875.

1. This case came on to be heard upon the bill, answers, affidavits and the motion of the plaintiff for an injunction and a receiver.

2. And upon consideration of the premises, the court declares that the collection of taxes made for the payment of the interest on the consolidated bonds issued under the charter of the city of New Orleans of the 23d February, 1852, and which are on deposit in the Louisiana National Bank, are a trust fund for the payment of the coupons of interest which are due and becoming due, on the said issue of bonds, and ought to be applied therefor, except where the holders of the said coupons have consented to accept a portion of the sum so collected according to the terms of the ordinance of the city, No. 3190, approved July 14, 1875.

It is therefore ordered that an injunction issue to the city of New Orleans and to the administrators and to the said Louisiana National Bank enjoining and restraining them and each of them from paying out, for any purpose whatever, so much of the said fund so raised and deposited as aforesaid as may be necessary for the payment of interest coupons on said consolidated loan, the holders of which have not consented to the terms of said city ordinance No. 3190, approved July 14, 1875.

It is further ordered that the motion for the appointment of a receiver be continued, with privilege to the plaintiff to renew the same in the event of a continuing default.

(Signed) W. B. WOODS, *Judge.*

Amended Decree, signed, entered and filed February 4, 1876.

Ordered that the decree of the 21st December, 1875, as amended on the 3d February, 1876, be re-engrossed upon the minutes, and now said decree reads as follows:

This cause came on to be heard upon the bill, answers, affidavits, and the motion of the plaintiff for an injunction and a receiver.

It is therefore ordered that an injunction issue to the city of New Orleans, and to the administrators, and to the said Louisiana National Bank, enjoining and restraining them and each of them from paying out, for any purpose whatever, so much of the said funds so raised and deposited aforesaid, except the sums that may be necessary for the payment of interest coupons on said consolidated loan, the holders of which have not consented to the terms of said city ordinance No. 3190, approved July 14, 1875, and the city of New Orleans and the Louisiana National Bank, its depository, are fully authorized and it is their duty, under the Act of the Legislature, to apply such sums to the payment of the coupons so designated and not paid, in the ordinary course of administration.

February 4, 1876.

(Signed) W. B. WOODS, *Judge.*

Decree entered, signed and filed April 21, 1877.

This cause came on to be heard upon the pleadings, evidence and master's report, and was argued by the counsel of the parties. On consideration whereof, it is ordered, adjudged and decreed that the injunction issued *pendente lite* be made perpetual, and that the city of New Orleans at once distribute ratably among the complainants and like coupon holders the

moneys actually on deposit to the credit of the consolidated coupons overdue and held by them.

It is further ordered, adjudged and decreed that the bill of the complainants, in so far as it seeks an injunction for any other purpose than that herein allowed, be dismissed, reserving the right of the complainants to urge at law the claims by them herein set up, and that the defendants pay all costs, except the costs of the master's report, which is ordered to be equally paid by the parties.

New Orleans, April 21, 1877.

(Signed) W. B. WOODS, *Judge.*

MAYORALTY OF NEW ORLEANS,
City Hall, May 26, 1875.

[No. 3130—Administration Series.]

Resolved, That the Council cordially approve and adopt the plan submitted by the Administrator of Finance, entitled the "premium bonded fund of the city of New Orleans," and the commissioners of the consolidated debt are hereby charged with the duty (by and with the advice and consent of the Council) to adopt the measures necessary to carry the same into execution.

Adopted by the Council of the city of New Orleans, May 25, 1875.

Yeas—Bertoli, Brown, Bouny, Burke, Landry, McCarthy, Pilsbury.

CHARLES J. LEEDS, *Mayor.*

A true copy:

J. H. HARDY, *Secretary.*

MAYORALTY OF NEW ORLEANS,
City Hall, August 31, 1875.

[No. 3233—Administration Series.]

An ordinance providing for the exchange of bonds for premium bonds, and to regulate and carry out the funding plan adopted by the Council.

Be it ordained, That the Administrator of Finance be and is hereby directed to exchange all recognized bonds of the city

of New Orleans, also of the late cities of Carrollton and Jefferson for premium bonds, in accordance with the plan adopted by the Council and approved by the Mayor on the twenty-fifth day of May, 1875. The said premium bonds shall be dated on the first of September, 1875, and bear interest at the rate of five per cent. per annum from the fifteenth day of July, 1875; they shall be signed by the commissioners of the consolidated debt, and be countersigned when issued by such parties as the Council may hereafter select for that purpose.

Be it further ordained, That on all bonds funded or hereafter to be funded under this ordinance the interest adjustment shall date from the first day of July, 1875, after which period the interest thereon shall cease.

Be it further ordained, That a permanent committee of six shall be appointed to represent the bondholders in all matters touching their interests under and in this ordinance. They and their successors shall at all times have free access to the records of the consolidated debt, and may exercise such control and supervision over the allotments, cancelation and registry of bonds as they may deem necessary. They shall fill all vacancies among themselves, and may, in their discretion, appoint a suitable person to act for them in all matters relating thereto.

The committee shall at present be composed of John G. Gaines, president of the Citizens' Bank; Thomas A. Adams, president of the Crescent Mutual Insurance Company; Aug. Bohn, president of the Mechanics and Traders' Bank; George Jonas, president of the Canal Bank; J. H. Oglesby, president of the Louisiana National Bank; Samuel H. Kennedy, president of the State National Bank.

Be it further ordained, That the bonds funded under this ordinance, except those which shall have been redeemed, shall not be cancelled or destroyed before the month of April, 1876. They shall be registered by number, marked, labeled and deposited in a safe manner until the period named.

Be it further ordained, That the first allotment of series shall take place on the fifteenth day of September next, or as soon thereafter as possible, and the first allotment of premiums on the fifteenth day of January, 1876, fixed. All subsequent allotments of series shall take place on the fifteenth of April and

the fifteenth of October; and of premiums on the fifteenth of January and fifteenth of July.

Be it further ordained, That untill all the bonds herein provided for are funded, it shall be the duty of the Administrator of Finance, immediately after the allotment of series, to invite by sealed proposals the exchange of old bonds for the drawn premium bonds remaining. Such proposals shall state the lowest price at which the old bonds are offered, payable in the drawn premium bonds, at face value and interest. The right to reject any or all bids to be reserved by the Council.

Be it further ordained, That all drawn series or numbers of premium bonds shall be received by the city for all dues, licenses, taxes or debts of any description at their face value and interest.

Be it further ordained, That all ordinances or parts of ordinances in conflict herewith, be and are hereby repealed.

Adopted by the Council of the city of New Orleans, August 31, 1875.

Yeas—Bertoli, Brown, Bouny, Burke, Landry, McCarthy, Pilsbury.

CHARLES J. LEEDS, *Mayor*.

A true copy:

J. H. HARDY, *Secretary*.

AFFIDAVITS OF T. LAYTON AND J. GARR.

Filed December 14, 1875.

Rosalie Maenhaut et al.	}	Circuit Court of the U. S. for Louisiana. No. 7423.
vs.		
The City of New Orleans et al.		

Thomas Layton, Esq., being duly sworn, says:

That prior to, and at the institution of this suit, he was, has since continued to be, and is presently, the duly constituted agent and attorney in fact, for the purpose of instituting this suit, of the complainants, viz:

1. Rosalie Maenhaut and Louise Maenhaut, subjects of the King of Belgium, their powers to him having been delegated on the 7th May, 1874.

2. Charles Ferdinand Rodewald, who is a subject of th Queen of Great Britain, his powers to him having been granted on the 14th May, 1875.

3. James A. Roosevelt, a citizen and resident of New York, his powers to him having been granted on the 21st March, 1875.

That the above entitled suit was instituted by affiant as their agent aforesaid, and is carried on by him in that capacity for their benefit and with their authority.

That the Bonds mentioned in the bill herein are the exclusive property of said complainants as stated in said bill, and were so before and at the institution of this suit, and that the Southern Bank, established in this city and whereof he is the President, never had any title, right or interest in or to said Bonds, and has none.

That the Bonds owned by Rosalie Maenhaut and Louise Maenhaut include not only the seven bonds mentioned in said bill, but a large number of similar bonds acquired in this city upwards of ten years ago.

That the bonds owned by Chas. F. Rodewald include not only the seven bonds mentioned in the bill, but also a number of other similar bonds acquired many years previous to the institution of these proceedings.

That the bonds owned by James A. Roosevelt were inherited by him from his father, who likewise was a citizen and resident of New York, and who had obtained the same from the City of New Orleans in exchange of certain municipal obligations susceptible of conversion in such bonds under the provisions of the Consolidated Act of 1852, No. 71.

That neither of the complainants has ever directly or indirectly acquiesced in the act of 1874, No. 53.

And next personally came and appeared Julian Garr, Esq., who, being duly sworn, says:

That he is the Cashier of the Southern Bank, established in this city, that he is familiar with all the assets, business and affairs thereof, and that it is to his personal, immediate and certain knowledge, as stated by Mr. Layton, that the said Bank has no right, title and interest in the bonds mentioned in the bill herein, and that said Bank never had any.

THOS. LAYTON.
J. GARR.

Sworn to and subscribed before me, on this 6th day of December, 1875.

F. B. VINOT,
Commissioner of U. S. Circuit Court.

AFFIDAVIT OF THOMAS LAYTON,

Relative to the *procurement* of Act No. 53 of 1874.

Offered in Evidence January 21st, 1878.

Rosalie Maenhaut et al.	Circuit Court of the U. S.
vs.	for Louisiana.
City of New Orleans, et al.	No. 7,423.

Filed December 16th, 1875.

Thomas Layton, Esq., being duly sworn, says:

That on the 12th of March, 1874, when Act No. 53 of 1874, p. 92, entitled "To postpone the levy and collection, by the City of New Orleans, of a tax for sinking fund, for purchase of its Bonds; to authorize the Administrators to modify the last Budget and tax-levy, and to repeal conflicting laws and penalties" was approved, he was not the agent of either of the complainants in this case; that he only became such *after* the passage of said Act and at the dates already stated in his previous affidavit; that it is not true that said Act was passed with his approbation and consent; that he never approved or consented to it—not only because he had no authority to do so, but because he was and has always been opposed to any legislation or act which could ever impair to any extent the vested rights of Bondholders of Bonds issued by the City of New Orleans, under the 37th Section of the Charter of 1852, in as much as such impairing of rights would have been unjust, illegal and *unconstitutional* and would have affected the interest of the Southern Bank of which he is the President, materially;—that said Bank has no interest in the Bonds mentioned in the Bills herein and which belong exclusively to the Complainants—although said Bank may have an interest in the

questions presented; that he never was authorized by said Bank to approve of or consent to said Act No. 53 of 1874, and that he has never approved or consented to the same, either on behalf of said Bank or of the Complainants or of himself; that when W. W. Howe called on him, in 1874, relative to the proposed suspension of the sinking fund for the Consolidated Debt of 1852, he (affiant) expressly and emphatically disavowed to that gentleman any authority to represent the Old Consolidated Bondholders in regard to the same; and, only in a spirit, he simply observed that he would state to such Bondholders as resided abroad and who might ask him his advice, that gentlemen had called to assure him that the proposed suspension of the sinking fund of that debt was intended merely as a matter of temporary relief to the tax payers of this City, and by no means whatever was it conceived with any idea of impairing in the slightest degree any of the vested rights of privilege and priority attached to said Old Consolidated Bonds; that affiant did accordingly so state to his friends in London, who were interested in the said Old Consolidated Bonds of 1852, and they promptly wrote in reply to him to disavow and discountenance such a measure, asserting that they believed it was intended as an entering wedge to repudiation; and that affiant acted accordingly:

That after the passage of the said Act, a meeting of City Bondholders was convened by the Mayor of this City, to which affiant was invited but which he respectfully declined to be present at, writing and sending to the Mayor, on the 20th March, 1875, a letter whereof a copy is hereto attached, wherein he states reasons for not participating in the contemplated deliberations.

THOS. LAYTON.

Sworn to and subscribed before me, this 15th of December, 1875.

F. B. VINOT,
Commissioner of U. S. Circuit Court.

COPY OF LETTER REFERRED TO IN THE ABOVE AFFIDAVIT.

Filed December 16th, 1875.

New Orleans, March 20th, 1875.

Hon. CHAS. J. LEEDS,
Mayor of New Orleans.

Dear Sir:—Your esteemed communication requesting my presence at a meeting of the holders of the Bonds of this City convoked for this evening, is respectfully acknowledged. I represent a large number of the Old Consolidated Bonds issued by this City in 1852. These Bonds are guaranteed by special laws which give them a preference over all other funded obligations of this City, and as the said meeting is called for all holders of Bonds, without discrimination, I fear there may be a conflict of interest between the Bonds represented by me and other inferior Bonds and I would, therefore, decline being present at said meeting. I will be pleased, however, to communicate my views to you in writing, should you hereafter desire the same, relative to the rights, intentions and wishes of the holders of these old preferred Bonds.

I have the honor to be, dear sir, your obedient servant,

THOS. LAYTON,
President.

State of La. ex rel., Southern Bank
vs.
E. Pilsbury, Mayor et al.

Third District Court,
No. 75,072.

AGREEMENT.

Filed January 22, 1878.

It is agreed that such Ordinances of the Council as relate to this controversy shall be considered as in evidence without being filed.

Same case. } Third District Court, No. 75,072.

AGREEMENT.

Filed January 29, 1878.

It is agreed that the relator is dispensed from filing the original bonds, held and owned by it, and mentioned in the petition, and whereof a descriptive list was filed in evidence, in place of said bonds, and that all or any of said original bonds can be used on the trial, as if filed in the record.

OFFICE OF COMMISSIONERS OF CONSOLIDATED DEBT,
CITY HALL,

BONDED INDEBTEDNESS, CITY OF NEW ORLEANS, DECEMBER 31ST, 1877.

NAME.	Letter	Date of Issue	FOR WHAT ISSUED.	Amount.	Interest.	Maturity.
Consolidated Bonds		May 1, 1851	Debt of Municipality No. 1	2,500 00	7 per cent.	May 1, 1876.
	M	Sept. 1, 1849	" " No. 3	400 00	"	Sept. 1, 1879.
	M	Nov. 1, 1849	" " No. 3	350 00	"	Nov. 1, 1879.
	J	Jan. 1, 1857	Consolidated City Debt of 1852	223,000 00	6 per cent.	Jan. 1, 1892.
	M	March 1, 1869	" " "	18,000 00	"	March 1, 1892.
	L	April 1, 1868	" " "	12,000 00	"	April 1, 1892.
	G	May 1, 1856	" " "	203,000 00	"	May 1, 1892.
	H	May 1, 1856	" " "	6,000 00	"	May 1, 1892.
	A	June 1, 1854	" " "	68,00 00	"	June 1, 1892.
	A	July 1, 1852	" " "	3,634,000 00	"	July 1, 1892.
	I	July 1, 1856	" " "	25,000 00	"	July 1, 1892.
	J	July 1, 1860	" " "	158,000 00	"	July 1, 1892.
	K	Aug. 1, 1864	" " "	42,000 00	"	August 1, 1892
Railroad Bonds	B	Jan. 1, 1855	Jackson Railroad Company	69,000 00	"	Jan. 1, 1875.
	B	March 1, 1855	" "	35,000 00	"	March 1, 1875.
	B	May 1, 1854	" "	463,000 00	"	May 1, 1874.
	B	May 1, 1854	" "	85,000 00	"	May 1, 1894.
	C	Jan. 1, 1855	Opelousas Railroad Company	16,000 00	"	Jan. 1, 1875.
	C	April 1, 1855	" "	25,000 00	"	April 1, 1875.
	C	May 1, 1854	" "	138,000 00	"	May 1, 1874.
	C	May 1, 1854	" "	20,000 00	"	May 1, 1894.
	C	Sept. 1, 1854	" "	30,000 00	"	Sept. 1, 1874.
	C	Sept. 1, 1854	" "	27,000 00	"	Sept. 1, 1894.
	D	July 15, 1854	Pontchartrain "	32,000 00	"	July 15, 1884.
Water Works Bonds	W	Jan. 1, 1869	Purchase of Water Works	830,500 00	5 per cent.	Jan. 1, 1899.
Seven Per Cent. Bonds, 1869	X	March 1, 1869	Registered Bills	348,000 00	7 per cent.	March 1, 1894.
	Y	March 1, 1869	City Notes	549,350 00	"	March 1, 1894.
Seven Per Cent. Bonds, 1870	N	June 1, 1870	City Notes, Warrants, etc	486,950 00	"	June 1, 1895.

BONDED INDEBTEDNESS—*Continued.*

NAME.	Letter	Date of Issue	FOR WHAT ISSUED.	Amount.	Interest.	Maturity.
Street Improvement Bonds	Q	Aug, 1, 1871.	Paving and Repairing Streets	30,000 00	7-30 per ct.	August 1, 1911
Ten Per Cent. Bonds	P	April 1, 1871.	Deficit and Old Claims	519,500 00	10 per cent.	April 1, 1881.
Jefferson City Bonds		Jan. 1, 1857.	Debt of Jefferson City, assumed	47,000 00	8 per cent.	Jan. 1, 1887.
		June 1, 1857	" " "	54,000 00	"	June 1, 1897.
One Million Loan Bonds	E	Oct. 1, 1868.	Four Year Loan	18,900 00	10 per cent.	Oct. 1, 1872.
Consol't'd Gold Bonds, Gen. Series		July 1, 1872.	Renewal of Obligations, etc	241,000 00	7 per cent.	July 1, 1922.
Cons'l't'd Gold Bonds, Dr'ge Series		July 1, 1872.	Drainage Canals and Protection Levees	73,000 00	"	July 1, 1922.
Street Assessment Bonds	S	Feb. 1, 1873.	Paving Streets	3,400 00	7-30 per ct.	Feb. 1, 1883.
	S	Nov. 24, 1874	"	100 00	"	Nov. 24, 1884.
Carrollton Funding Bonds	A	Nov. 1, 1871.	Debt of Carrollton City, assumed	50 00	8 per cent.	Nov. 1, 1901.
Carrollton Improvement Bonds	B	Nov. 1, 1872.	" " "	975 00	"	Nov. 1, 1892.
Premium Bonds			Total amount of Premium Bonds issued in exch'ge for oth'r bonds $12,039,560 00			
			Less amount paid and cancelled $193,800 00			
			Less amount bought and held by city 560,760 00	754,560 00		
				11,285,000 00		
			Certificates for Gold Bonds, General Series	13,059 56		
			" " Drainage Series	2,878 76		
			Seven per cent. Bond Certificates	5,817 09		
			7-30 Administration Certificates	6,180 93		
			Certificates for Ten per cent. Bonds	255 96		
			Bills Payable (Jefferson City Notes)	210 37		
			Certificates for Street Improvement Bonds	1,449 79		
			Total	19,849,827 46		

ED. PILSBURY, *Mayor.*
J. C. DENIS, *Administrator of Finance.*
J. G. BROWN, *Administrator of Public Accounts,* } *Commissioners of Consolidated Debt.*

NOTE.—$470,000 00 Wharf Improvement Bonds, maturing December, 1880, (payment assumed by Lessees of Wharves) not included in above statement.

DEPARTMENT OF PUBLIC ACCOUNTS,
CITY HALL.

FLOATING INDEBTEDNESS—CITY OF NEW ORLEANS.

December 31st, 1877.

Certificates of Appropriation	$129,379 23	
Certificates for § Tax excess	13,336 49	
Tax Warrants	7,627 23	
Interest unpaid	135,848 69	
Unpaid Ordinances, 1873	74,221 95	
" 1874	326,556 37	
" 1875	120,789 88	
" 1876	493,472 33	
" 1877	350,000 00	
Registered Judgments	186,000 00	
Certified Debt, City of Carrollton	4,696 28	
Total Floating Debt		$ 1,841,928 45
Total Bonded Debt per Statement		19,849,827 46
		$21,691,755 91

COMPARATIVE STATEMENT BONDED AND FLOATING DEBTS FOR FOLLOWING YEARS.

Total Bonded and Floating Debt, Dec. 31, 1874.	$24,741,765 87
Total Bonded and Floating Debt, Dec. 31, 1875.	23,233,717 16
Total Bonded and Floating Debt, Dec. 31, 1876.	22,638,779 21
Total Bonded and Floating Debt. Dec. 31, 1877.	21,691,755 91

J. G. BROWN,
Administrator of Public Accounts.

Reduction of the Bonded and Floating Debt for twelve months, from 31st December, 1876, to 31st December, 1877, $947,023 30.

ANNUAL STATEMENT OF THE COMMISSIONERS OF THE CONSOLIDATED DEBT AND OF THE WHOLE FUNDED DEBT OF NEW ORLEANS, FROM JANUARY 1 TO DECEMBER 31, 1869.

The Board of Commissioners of the Consolidated Debt of

the City of New Orleans, in submitting their annual report for the year 1869, deem it necessary only to give a synopsis of the history, and collate such statements as will clearly show the condition of the several Trust Funds entrusted to them by law.

"CONSOLIDATED DEBT."

By an Act of the Legislature of the State of Louisiana, entitled "An Act to consolidate the City of New Orleans and provide for the government and administration of its affairs, approved 23d February, 1852, and a supplementary Act, providing for the incorporation of the City of Lafeyette with the City of New Orleans, approved on the same day, the Mayor, Controller, Treasurer, and the two (2) chairmen of the Finance Committees of the Common Council, were constituted a commission to be styled the Commissioners of the Consolidated Debt of New Orleans, with power to issue Bonds, not having more than forty years to run, with interest coupons attached thereto, in exchange for any bonds, obligations or debts of the old City, or any of the Municipalities, or City of Lafayette, whether matured or not—or to sell Bonds and apply the proceeds to the payment of the debts of the same, as they matured, but for no other purposes.

To meet the Interest Coupons at maturity, the expenses of the management of the Fund and for the gradual redemption of the Bonds thus issued, the laws above-mentioned make it obligatory on the Common Council to raise by taxation on the assessed value of *Real Estate*, situated in the limits of the city, the sum of $650,000 yearly, until the final payment of all the debt, *Principal* and *Interest;* and all ordinances, resolutions or other acts passed by the Common Council, after the 1st day of January in each and every year, shall be null and void, unless the Ordinance imposing and fixing the Consolidated Loan Tax shall have been previously passed and adopted by both Boards of the Common Council.

The total amount of collections during the year 1869 by the City on account of said Loan Tax was		$550,724 00
The City Treasurer, according to the City Charter, deposited with the Southern Bank Fiscal Agent, up to the 30th September, 1869, the sum of	$530,081 68	
On the 1st of October (or prior) the Southern Bank resigned as Fiscal Agent and the City Treasurer acting as such, deposited in the vault of the Commissioners of the Consolidated Debt the sum of	20,642 32	
		550,724 00
The Southern Bank while acting as Fiscal Agent paid out for past due and matured coupons on Bonds and for expenses incidental with the management of the Fund	507,438 51	
The City Treasurer acting as Fiscal Agent from October 1 to date, paid on account of old Coupons and expenses.	1,185 00	
		508,623 51
Leaving a Cash Balance on hand of		$ 42,100 49

This balance would have been a great deal larger, if unavoidable circumstances, such as the failure of the First National Bank of N. O. and the controversy with S. Howell, late City Treasurer, acting as Fiscal Agent, had not occurred; and also the fact that the whole of the taxes of 1867, collected in 1868, were received in City Notes, which at that time were at a heavy discount and were refused by the bondholders in payment of their interest coupons, thus forcing a large amount of coupons due in 1868, to be paid out of the receipts for the year 1869, as it will more fully appear by the subjoined statement of assets not available at the present time:

First National Bank of N. O. Fiscal Agent, balance	$42,772 85	
First National Bank of N. O. Account No. 2	3,017 31	
S. Howell, City Treasurer, Fiscal Agent.	21,753 41	
Amount of City Notes received for taxes due prior to 1869, in the vault of the Consolidated Debt	80,930 77	
		$148,474 34

It is proper to state, that although no bonds have been purchased since 1867, by the Board, consolidated debt has been reduced by the destruction by fire, of Consolidated City Notes of the denomination of $20, which are convertible at the will of the holders thereof into Consolidated Bonds, to the amount of $443,500 which were received by the City Treasurer in payment of the Consolidated Loan Tax for the year 1868.

The total assessment of Real Estate for the year 1869, as per Rolls of Assessors, amounts to		$106,259,295 00
On which a tax of 62 cents per per one hundred dollars has been levied, collectable in 1870, amounting to	$658,807 62	
Deducting 10 per cent. for non-collections during the year	65,880 76	
Will leave a balance of		$592,926 86

Payments to be met during the Year:

Interest Coupons due during the year 1870, as per Statement No. 3	$340,639 50	
Salaries, Stationery, Advertisements, etc.	4,000 00	
By reference to Tableau No. 10 it will be perceived that a large amount of Coupons are past due, which may be presented for payment at any moment	34,320 00	
And also Coupons of the old Corporations amounting to the aggregate of	$ 9,975 00	
		$ 388,992 36
Balance after the payment of all interest and expense for the year of		$ 203,262 36

RAIL ROAD DEBT.

JACKSON AND OPELOUSAS.

By authority of State Laws, approved 15th March 1854, and

under the provisions of Ordinances of the Common Council. approved 7th April, 1854, and ratified by the vote of the citizens, at an election held on the 21st April 1854, the city of New Orleans subscribed for 80,000 shares of $25 each to the Stock of the New Orleans, Jackson & Great Northern Rail Road Company, and for 60,000 shares of $25 each to the stock of the New Orleans, Opelousas and Great Western Rail Road Company—payable in Bonds of the City bearing 6 per centum per annum and due in 1874.

By law it is made imperative on the Common Council to levy a tax annually on Real Estate and personal property situated in the limits of the City, on or prior to the 1stday of January in each and every year, sufficient to pay the annual interest on said Bonds, to be collected in the same manner and at the same time as the Consolidated Loan Tax, and all ordinances or resolutions passed by the Common Council after the 1st of January, except the ordinance imposing the Consolidated Loan Tax, shall be null and void, unless the resolution imposing the Special Tax for the payment of said interest shall have been previously passed.

The only provisions made by these Acts and Ordinances to secure the payment of the principal of these Bonds, are the dividends to be declared by these Rail Road Companies.

PONTCHARTRAIN.

The subscription by the City to the Stock of this Rail Road Company, pursuant to the law of the State, approved March 15th 1854, and the Ordinance of the Common Council approved June 16th, 1854, to assist in building a road from New Orleans to Mobile, was originally $1,500,000—but only $500,000 of Bonds were issued. Owing to the failure of that corporation to comply with the condition of the contract, by judgment and compromise the Company returned to the City 367 Bonds of $1000 each, thus leaving an outstanding amount of 133 Bonds of $1000 each, dated 15th January, 1854, at 30 years. To meet the interest on the same a tax on Real and Personal property and on all Licences is levied annually, but no provisions for the payment of the principal (which is due in 1884) have been made.

Stock in New Orleans & Jackson R. R. Co.....		$2,000,000
Do	" & Opelousas Do	1,500,000
Do	Ponchartrain R. R. Co.	133,000
		$3,633,000
Total Bonds outstanding.....		$3,622,000

To meet the interest the Common Council have complied with the provisions of the several acts above mentioned, by levying a tax of 16 cents per one hundred dollars of Real and Personal property and tax of 3 per cent. on the cost of all licenses.

SEVEN PER CENT. BONDS.

This Fund was created by an act of the Legislature approved 27th February, 1869, entitled "An Act to enable the City of New Orleans to fund its Floating Debt and to liquidate its indebtedness. Pursuant to section 1st the City was empowered to issue $3,000,000 worth of Bonds for the specific purpose of covering the obligations of the City, known as City Notes.

By section 3d of said Act the City was authorized to issue Bonds to the amount of $2,000,000 to liquidate the balance of the floating debt. The said Bonds to be delivered to the Fiscal Agent and to be by him exchanged, at par, for those obligations. Section 5th makes it the duty of the Treasurer (under very severe penalties in case of failure) to deposit with the Fiscal Agent on the first Monday of every month, the sum of $29,166 66 to be applied exclusively to the payment of the semi-annual Interest Coupons.

According to the provisions of said law, the City has issued, to date, Bonds, as it will more fully appear by reference to Statement No. 9, to the amount of $3,366,700.

ONE MILLION LOAN—TEN PER CENT BONDS.

In conformity with an Act of the General Assembly of the State entitled "An Act to enable the City of New Orleans to procure a Loan of Money to meet its current liabilities, approved September 5th, 1868, and an Ordinance of the Common Council authorizing the issue of City Bonds and providing for the payment of the same, approved September 11th, 1868," the

City issued one million dollars of Bonds of different denominations, bearing 10 per cent. interest payable semi-annually in one, two, three and four years, all dated 1st October, 1868. By the 3d section of the Ordinance above mentioned a tax of one-fourth of one per cent. is levied annually on all Real Estate and Personal Property for the payment of the Interest Coupons and the final redemption of the Bonds. Said tax to be collected at the same time and manner as the Consolidated Loan and Rail Road Taxes to be deposited daily in a Bank to be designated by the Mayor, Controller, Treasurer and Chairmen of the Finance Committees.

By the budget adopted by the Common Council for the year 1870, a sum of $625,000 has been appropriated for the payment of principal and interest past due and falling due during the year.

WATER WORKS.

In accordance with an Act of the Legislature, No. 40, approved 1st April, 1833, and an Ordinance of the Common Council No. 1146, approved 30th November, 1868, the City of New Orleans purchased the Water Works Department of the Commercial Bank, for the sum of $1,393,900 payable in Bonds—dated 1st January, 1869, at 30 years, bearing 5 per cent. interest per annum. The City Treasurer handed over to the President and Representatives of the said Water Works Department $1,393,400 worth of said Bonds and has deposited with the Board of Commissioners of the Consolidated Debt, five Bonds of $100 each. To insure the payment of the interest on the same no special fund has been created—but in the budget for the year 1870 an amount of $104,685 has been set aside for said purpose, which sum will be sufficient to meet all interest coupons.

For reference the following Statements are respectfully submitted to parties interested :

Statement No. 1—Balance Sheet from the Books of the Consolidated Debt.

" No. 2—Amount and Maturity of the Consolidated Debt.

" No. 3—Interest payable yearly " "

AD

Statement No. 4—Balance Sheet from Books of Rail Road Debt

" No. 5—Stock in Rail Road Companies.

" No. 6—Outstanding Bonds issued to Rail Road Companies and Interest payable yearly.

" No. 7—Balance Sheet 10 per cent. Bonds, or Million Loan.

" No. 8—Balance Sheet Water Works Bonds.

" No. 9—Balance Sheet 7 per cent. Bonds.

" No. 10—Coupons past due of Consolidated Debt.

" No. 11—Coupons past due of Rail Road Debt.

" No. 12—Bonded Debt of the city of New Orleans and Interest to be met during the year 1870.

" No. 13—Tableau of the assessed value of Real and Personal Property from the Act of Consolidation, 1852, to the year 1869 inclusive, and ratio of Taxation.

JOHN R. CONWAY,
Mayor.

J. O. LANDRY,
Controller.

W. S. MOUNT,
Treasurer.

VICTOR PRADOS,
Chairman Finance Com. Board of Aldermen.

W. H. PEMBERTON,
Chairman Finance Com. Board of Assistant Aldermen.

O. DEBUYS,
Secretary.

STATEMENT No. 1.

BALANCE SHEET from the Books of the Commissioners of the CONSOLIDATED DEBT to 31st December, 1869.

DR.

Consolidated debt of New Orleans	$7,067,404 14
Interest	7,825,306 50
Expense	116,014 88
Premium	60,472 38
Suspense	104,571 68
First National Bank of New Orleans	42,772 85
" " " Account No 2	3,017 31
S. Howell, Treasurer, acting as Fiscal Agent	21,753 41
W. S. Mount, " " " "	19,457 32
Southern Bank Fiscal Agent	22,643 17
Discount	154,216 54
Pledge	37,500 00
McDonough Bequest	713 98
Petty Cash	52 71
W. S. Mount Fiscal Agent (City Notes)	80,930 77
Do. Treasurer Account No. 2	5,802 50
Profit and Loss	4,207 17
	$15,566,837 31

BALANCE SHEET from the Books of the Commissioners of the CONSOLIDATED DEBT to 31st December, 1869.

			Cr.
Bonds Payable			$ 5,394,000 00
Exchange			4,438 55
Consolidated issue of $20 Notes			92,200 00
do	Loan Tax	1852	650,262 60
do	do	1853	627,234 39
do	do	1854	586,419 87
do	do	1855	661,466 30
do	do	1856	619,644 12
do	do	1857	631,195 50
do	do	1858	659,171 17
do	do	1859	636,648 63
do	do	1860	615,872 89
do	do	1861	653,922 18
do	do	1862	451,866 37
do	do	1863	422,775 99
do	do	1864	576,727 57
do	do	1865	561,232 78
do	do	1866	596,964 24
do	do	1867	616,462 88
do	do	1868	508,332 28
			$15,566,837 31

New Orleans, 31st December, 1869.

O. DEBUYS, *Secretary.*

STATEMENT No. 2.

Amount and Maturity of the Consolidated Debt. 31st Dec., 1869.

When Due.	Issued by.	To Whom.	Amount.
1863, 15th Aug.	Municipality No. 2	—J Minturn	$ 1000
1864, 1st "	Old City	do	1000
1865, 1st Jan.,	Municipality No. 2	—S Arnald	1500
1867, 7th "	do	—J Fowler	1000
1868, 1st Dec.,	do	—City B'k	8000
1873, 20th June,	Old City	—Com. B'k,	336,000
1877, 1st May,	Municipality No. 3	—Treas ...	350
1874, 1st "	do No. 1H	Shepherd	2500
	Total Debt of Old Corporation.....		$351,350
1892, 1st June,	Con. Debt, Bearer, Letter	A.	$ 70,000
" 1st July,	do " "	A.	4,287,000
" 1st May	do " "	G.	290,000
" 1st "	do " "	H.	6,000
" 1st July,	do " "	I.	29,000
" 1st Jan.,	do " "	J.	291,000
" 1st July	do " "	J.	107,000
" 1st Aug.	do " "	K.	66,000
" 1st April,	do " "	L.	65,000
" 1st Aug.,	do " "	L.	94,000
" 1st March,	do " "	M.	89,000
	Total Consolidated Bonds.....		$5,394,000
	Consolidated Notes of $20 each		92,200
	" " issued in pay't of coupons		37,500
			$5,875,050

New Orleans, 31st December, 1869.

O. DEDUYS, *Secretary.*

STATEMENT No. 3.

Interest payable yearly on Consolidated Debt.

Obligations.	Rate.	Outstanding.	Interest.
Bonds to Com. Bank	.5 per cent.	$ 336,000 00	16,800 00
" of Municip'y No 1,	7 per cent.	2,500 00	175 00
" " No 3,	7 per cent.	350 00	24 50
" past due bearing no interest,		12,500 00	
Total debt of Old Corporations..		$351,350 00	
Bonds issued by the Commissioners of the Consolidated Debt, in accordance with an Act of the Legislature, approved 23d February, 1852	6 per ct.	5,394,000 00	323,640 00
Con. City Notes of $20 ..		92,200 00	
" Notes issued in payment of Coupons past due.....		37,500 00	
Total Debt		$5,875,050 00	
Total Interest			$340,639 50

New Orleans, 31st December, 1869.

O. DEBUYS, *Secretary.*

STATEMENT No. 4.

BALANCE SHEET from the Books of the Commissioner of the RAILROAD DEBT, to 31st December, 1869.

Dr.

Stock in the N. O., Jackson & G. N. R. R. Co..	$1,992,000 00
" " " Opelousas & G. W. R.R "	1,497,000 00
Subscription to Pontchartrain & M. R. R. "	133,000 00
Bonds Redeemed	49,000 00
First National Bank of N. O. ex Fiscal Agent..	18,472 99
" " " account No. 2	537 00
Southern Bank, late Fiscal Agent	15,325 92
W. S. Mount, Treasurer, acting Fiscal Agent..	7,304 56
Interest Coupons Bonds, "B".....	1,622,620 00
" " " "C".....	1,239,620 00
" " " "D".....	133,950 00
Exchange.....	465 00
Expense	7,017 00
	$6,716,352 47

BALANCE SHEET from the Books of the Commissioner of the RAILROAD DEBT, to 31st December, 1869.

	Cr.
Bonds Payable	$3,622,000 00
Interest on Railroad Bonds, 1854	15,792 23
.. 1855	225,697 31
.. 1856	259,881 70
.. .. . 1857	215,282 92
.. 1858	218,306 71
.. 1859	205,576 22
.. 1860	134,458 87
.. 1861	212,161 34
.. 1862	175,946 63
.. 1863	152,254 04
.. 1864	222,097 89
.. 1865	214,940 48
.. 1866	218,446 36
.. 1867	222,072 30
.. .. 1868	196,254 84
.. Pontchartrain ..	200,802 63
.. General Account	4,480 00
	$6,716,352 47

New Orleans, 31st December, 1869.

O. DEBUYS, *Secretary.*

STATEMENT No. 5.

City Stock in Railroad Companies.—Bonds issued as follows:

No.	To	When due	Amount.	
1700	N. O. J. R. R. Co.,	1874, May 1	$1,700,000	
200	do do	" Jan. 1	200,000	
100	do do	" March 1	100,000	
2000	Bonds of $1000, Letter B			$2,000,000
1125	N. O. O. R. R. Co.,	1874, May 1	$1,125,000	
150	do do	" Sept. 1	150,000	
150	do do	" Jan. 1	150,000	
75	do do	" April 1	75,000	
1500	Bonds of $1000, Letter C			1,500,000
	Total Stock			$3,500,000
Subscription to Pontchartrain R. R. Co.,				
133	Bonds of $1000, Letter D, 1884, Jan. 15			133,000
	Total Bonds to Rail Road Companies			$3,633,000

New Orleans, 31st December, 1869.

O. DEBUYS, *Secretary.*

STATEMENT No. 6.

Amount of Bonds issued to Railroad Companies Outstanding on 31st December, 1869.

198	Bonds to N. O. Jackson R. R. Co.				$ 198,000	
100	do	do	do	do	100,000	
1694	do	do	do	do	1,694,000	
1992	do of $1000 each, bearing 6 per cent					$ 1,992,000
150	do to N. O. Opelousas R. R. Co				150,000	
75	do	do	do	do	75,000	
1125	do	do	do	do	1,125,000	
147	do	do	do	do	147,000	
1497	do of $1000 each bearing 6 per cent					1,497,000
133	do to Pontchartrain Rail Road Co. 6 per cent					133,000
	Total					$3,622,000

AE

Interest Payable Yearly.

348 Bonds of $1000. Coupons due January and July 1st	$ 20,880
247 Bonds of $1000. Coupons due March and September 1st	14,820
75 Bonds of $1000. Coupons due April and October 1st	4,500
2819 Bonds of $1000. Coupons due May and November 1st	169,140
133 Bonds of $1000. Coupons due January and July 15th	7,980
Total	$217,320

New Orleans, 31 December, 1869.

O. DEBUYS,
Secretary.

STATEMENT No. 7.

BALANCE SHEET, 10 *per cent. Bonds to* 31*st December* 1869.

	Dr.	Cr.
Bonds Payable		$1,000,000 00
10 per cent. bonds at one year	3,907 87	
10 per cent. bonds at two years	250,000 00	
10 per cent. bonds at three years	250,000 00	
10 per cent. bonds at four years	250,000 00	
Interest on bonds at (1) one year	49,890 00	
Expense account	335 00	
City Treasurer (Collections of Tax for bonds at one year)	189,138 38	
W. S. Mount, Acting Fiscal Agent	6,728 75	
	$1,000,000 00	$1,000,000 00

New Orleans, 31st December, 1869.

O. DEBUYS,
Secretary.

STATEMENT No. 8.

BALANCE SHEET, City Water Works, to 31st December, 1869.

	Dr.	Cr.
City Water Works	$1,393,400	
Bonds Payable		$1,393,400
Expense Account	180	
Southern Bank Fiscal Agent		31,680
Interest account	31,500	
	$1,425,080	$1,425,080

New Orieans, 31st December, 1869.

O. DeBUYS,
Secretary.

STATEMENT No. 9.

BALANCE SHEET, 7 per cent. Bonds, to 31st December, 1869.

	Dr.	Cr.
Southern Bank Fiscal Agent, Cash Account	$ 111,784 34	
Southern Bank Fiscal Agent, Bond Account	1,483,300 00	
Seven per cent. 'Y' Bonds		901,890 60
Seven per cent. 'X' Bonds		581,500 00
Expense Account	7,649 71	
Interest seven per cent. 'Y' Bonds	56,730 11	
Interest seven per cent. 'X' Bonds	28,227 50	
Five Million Bonds		204,166 66
W. S. Mount, acting Fiscal Agent		225 00
	$1,687,691 66	$1,687,691 66

New Orleans, 31st December, 1869.

O. DeBUYS,
Secretary.

NOTE—

Amount of Bonds delivered to the Southern Bank, Thos. Layton, President, Fiscal Agent.		
Bonds 'Y' for the conversion of City Notes.....	$2,850,000 00	
Bonds 'X' for the redemption of Floating Debt....	2,000,000 00	$4,850,000 00
Amount of Bonds issued by said Fiscal Agent.		
Bonds 'Y' ...	$1,948,200 00	
Bonds 'X'	1,418,500 00	3,366,700 00
Balance in the hands of Fiscal Agt.		$1,483,300 00
Bonds 'X'	581,500 00	
Bonds 'Y'...	901,800 00	$1,483,000 00

STATEMENT No. 10.

Amount of Consolidated Coupons past due to 31st December, 1869.

	WHEN DUE.										Number of Coupons	Am't.
Bonds "A"	Prior to 1862	1862 Jan.	1862 July.	1863 Jan.	1863 July	1864 Jan.	1864 July.	1865 Jan.	1865 July.	1866 Jan.		
.. ..	95	5	11	9	10	7	10	9	7	8	171	5,130
.. ..	1866 June	1866 July	1867 Jan.	1867 July	1867 Dec.	1868 Jan.	1868 July	1868 Dec.	1869 Jan.	1869 July		
.. ..	1	12	16	35	1	111	85	2	95	155	513	15,390
.. ..	1869											
.. ..	Dec.											
.. ..	32										32	960
.. "G"	1862	1867	1869									
.. ..	May.	May.	Nov.									
.. ..	1	107	54								162	4,860
.. "H"	1869											
.. ..	Nov.											
.. ..	2										2	60
.. "I"	1869											
.. ..	July											
.. ..	9										9	270
.. "J"	Prior	1866	1866	1867	1867	1868	1868	1869	1869			
.. ..	to 1866	Jan.	July.	Jan.	July.	Jan.	July.	Jan.	July			
.. ..	19	2	2	1	3	2	2	2	3		36	1,080
.. "K"	1867	1867	1869	1869								
.. ..	Feb.	Aug.	Feb.	Aug								
.. ..	1	13	15	16							45	1,350
.. "L"	1868	1869	1869	1869								
.. ..	Oct.	Feb.	April	Aug								
.. ..	15	1	18	94							128	3,840
.. "M"	1869											
.. ..	Sept											
.. ..	40										46	1,380
	Total										1,144	$34,320

E. & O. E.

O. DEBUYS,
Secretary,

STATEMENT No. 11.

Amount of Railroad Coupons past due, 31st December, 1869.

	WHEN DUE.									Number of Coupons.	Am't
Bonds "B"	Prior to 1866	1866 Jan.	1866 May.	1866 July.	1866 Sept.	1866 Nov.	1867 Jan.	1867 Mr'ch	1867 May.		
.. ..	222	2	19	2	1	20	2	1	462	731	21,390
.. ..	1867 July.	1867 Nov.	1868 Jan.	1868 March	1868 May	1868 July.	1868 Sept.	1868 Nov.	1869 Jan.		
.. ..	13	37	8	1	41	8	1	52	8	169	5,070
.. ..	1869 March.	1869 May.	1869 July.	1869 Sept.	1869 Nov						
.. ..	10	84	52	50	158					354	10,620
Bonds "C"	Prior 1866	1866 May.	1866 Nov.	1866 Sept.	1867 May.	1867 March	1867 Sept.	1867 Nov.	1868 Mr'ch		
.. ..	37	2	6	1	110	3	3	21	7	190	5,700
.. ..	1668 May.	1868 July.	1868 Sept.	1868 Nov.	1869 Jan.	1869 May.	1869 March	1869 July.	1869 Sept.		
.. ..	18	3	7	17	1	15	10	45	58	174	5,220
.. ..	1869 Oct.	1869 Nov.									
.. ..	67	172								239	7,170
Bonds "D"	1866 Jan.	1867 July.	1868 Jan.	1868 July.	1869 Jan.	1869 July					
.. ..	6	4	4	5	3	31				53	1,590
									Total	1,910	$57,300
									Less coupons, mutilated and not numbered	89	2,670
									Outstanding	1,821	$54,630

E. & O. E.

O. DEBUYS,
Secretary.

STATEMENT No. 12.

GENERAL STATEMENT OF THE MONTHLY INTEREST TO BE MET ON THE BONDED DEBT OF THE CITY OF NEW ORLEANS—31st DECEMBER, 1869.

BONDS OUTSTANDING.					INTEREST COUPONS.											
ISSUED FOR.	AMOUNT.	INTEREST.	When due YR	When due MTH	Due in January.	Due in Feb'ry.	Due in March.	Due in April.	Due in May.	Due in June.	Due in July.	Due in August	Due in Sept.	Due in October.	Due in Nov.	Due in Dec.
Municipality No. One	2,500 00	7 Per Cent.	1876	May					87 50						87 50	
" Three	350 00	7 "	1877	May					12 25						12 25	
Old Corporation	336,000 0.	5 "	1873	June						8,400 00						8,400 00
N. O. Jackson R. R. Co.	198,000 00	6 "	1874	Jan.	5,940 00						5,940 00					
" "	100,000 00	6 "	1874	Mar.			3,000 00						3,000 00			
" "	1,694,000 00	6 "	1874	May					50,820 00						50,820 00	
N. O. Opelousas R. R. Co.	147,000 00	6 "	1874	Jan.	4 410 00						4,410 00					
" "	75,000 00	6 "	1874	April				2,250 00						2,250 00		
" "	1,125,000 00	6 "	1874	May					33,750 00						33,750 00	
" "	150,000 00	6 "	1874	Sept.			4,500 00						4,500 00			
Consolidated Debt	291,000 00	6 "	1892	Jan.	8,730 00						8,730 00					
"	89,000 00	6 "	1892	Mar.			2,670 00						2,670 00			
"	65,000 00	6 "	1892	April				1,950 00						1,950 00		
"	296,000 00	6 "	1892	May					8,880 00						8,800 00	
"	70,000 00	6 "	1892	June						2,100 00						2,100 00
"	4,423,000 00	6 "	1892	July	132,690 00						132,690 00					
"	160 000 00	6 "	1892	Aug.		4,800					3,990 00	4,800 00				
Pontchartrain R. R. Co.	133 000 00	6 "	1884	Jan.	3,990 00						34,835 00					
City Water Works	1 393,400 00	5 "	1899	Jan.	34,835 00											
Loan at One Year	250,000 00	10 "	1869	Oct.				110 00						*50,000 00		
" Two Years	250,000 00	10 "	1870	Oct.				12,500 00						12,500 00		
" Three Years	250,000 00	10 "	1871	Oct.				12,500 00						12,500 00		
" Four Years	250,000 00	10 "	1872	Oct.				12,500 00						12,500 00		
Conversion of City Notes	1,948,300 00	7 "	1894	Mar.			68,187 00						68,187 00			
Redemption of Floating Debt	1,418,500 00	7 "	1894	Mar.			49,647 50						49,647 50			
Debts past due no Interest	12 500 00															
Notes " "	37,500 00															
Consolidated $20 "	92,200 00															
Total Bonded Debt	$15,257 150 00				190,595 00	4,800 00	128,004 50	41,810 00	93,549 75	10,500 00	190,595 00	4,800 00	128,004 50	91,700 00	93,549 75	10,500 00

Interest as per above	988,408 50
Consolidated Coupons past due	34 320 00
Railroad " "	54,630 00
Water Works " "	3,335 00
Old Corporat'ns. " "	9,975 00
Grand Total	$1,090,668 50

*Six Month's Interest on Million Loan due 1st Oct. 1869.

New Orleans, 31st December, 169,

O. DEBUYS,

E. & O. E.

Secretary.

STATEMENT NO. 13.

Valuation of Real Estate, &c., and Ratio of Taxation from the year 1852 to 1869.

1852.

Valuation of Real Estate	$ 62,779,237
Valuation of Slaves	3,852,700
Total Valuation	$ 66,631,937

Ratio of Taxation on every $100.

	City Tax	Consolidated.	Opel. R. R.	Jacks'n R. R.	Total.
First District	75	1 05	33⅓	50	2 63⅓
Second District	75	90	33⅓	50	2 84⅓
Third District	75	1 65	33⅓	50	3 22⅓
Fourth District	75	80	33⅓	50	3 38⅓

1853.

Valuation of Real Estate	$ 66,350,260
Valuation of Slaves	4,342,300
Total Valuation	$ 70,692,560

Ratio of Taxation on every $100.

	City Tax.	Consolidated.	Total.
First District	90	97	1 87
Second District	90	85	1 75
Third District	90	1 55	2 45
Fourth District	90	75	1 65

1854.

Valuation of Real Estate	$ 67,590,820
Valuation of Slaves	4,656,600
Total Valuation	$ 72,247,420

Ratio of Taxation on every $100.

	City Tax.	Consolidated.	R. R. Tax.	Total.
First District	1	97	50	2 47
Second District	1	87	50	2 37
Third District	1	1 39	50	2 89
Fourth District	1	75	50	2 25

1855.

Valuation of Real Estate	$ 66,231,005
Valuation of Slaves	4,897,140
Total Valuation	$ 71,128,145

Ratio of Taxation on every $100.

	City Tax.	Consolidated.	R. R. Tax.	Total.
First District	30	97	34	1 61
Second District	30	85	34	1 49
Third District	30	1 50	34	2 14
Fourth District	30	73	34	1 37

1856.

Valuation of Real Estate	$ 67,791,615
Valuation of Slaves	5,183,580
Valuation of Personal Property	23,111,427
Total Valuation	$ 96,086,622

Ratio of Taxation on every $100.

City Tax on Real Estate and Slaves		37
City Tax on Personal Property	1 27	
Consolidated Loan Tax on Real Estate		90
Special Railroad Tax	23	23
Totals	1 50	1 50

1857.

Valuation of Real Estate	$ 73,102,375
Valuation of Slaves	5,972,555
Valuation of Personal Property	26,396,967
Total Valuation	$105,471,897

Ratio of Taxation on every $100.

City Tax on Real Estate and Slaves		44
City Tax on Personal Property	1 28	
Consolidated Tax on Real Estate and Slaves		84
Special Railroad Tax	22	22
Totals	1 50	1 50

1858.

Valuation of Real Estate	$ 73,722,926
Valuation of Slaves	5,941,650
Valuation of Personal Property	29,229,865
Total Valuation	$108,894,441

Ratio of Taxation on every $100.

City Tax on Real Estate and Slaves		44
City Tax on Personal Property	1 28	
Consolidated Tax on Real Estate and Slaves		84
Special Railroad Tax	22	22
Totals	1 50	1 50

1859.

Valuation of Real Estate	$ 76,742,324
Valuation of Slaves	6,394,085
Valuation of Personal Property	26,652,387
Total Valuation	$109,788,796

Ratio of Taxation on every $100.

City Tax on Real Estate and Slaves		50
City Tax on Personal Property	1 30	
Consolidated Tax on Real Estate and Slaves		80
Tax for Interest on R. R. Bonds	20	20
Totals	1 50	1 50

1860.

Valuation of Real Estate	$ 83,702,710
Valuation of Slaves	6,595,550
Valuation of Personal Property	30,732,390
Total Valuation	$121,030,650

Ratio of Taxation on every $100.

City Tax on Real Estate and Slaves		56
City Tax on Personal Property	1 31	
Consolidated Tax on Real Estate and Slaves		75
Tax for Interest on R. R. Bonds	19	19
Totals	1 50	1 50

1861.

Valuation of Real Estate		$ 87,434,550
Valuation of Slaves		6,609,210
Valuation of Personal Property		31,148,733
Total Valuation		$125,192,403
Ratio of Taxation on every $100.		
City Tax on Real Estate and Slaves		56
City Tax on Personal Property	1 31	
Consolidated Tax on Real Estate and Slaves		75
Tax for Interest on R. R. Bonds	19	19
Totals	1 50	1 50

1862.

Valuation of Real Estate		$ 94,006,870
Valuation of Slaves		
Valuation of Personal Property		28,402,907
Total Valuation		$122,409,777
Ratio of Taxation on every $100.		
City Tax on Real Estate and Slaves		29
City Tax on Personal Property	83	
Consolidated Tax on Real Estate and Slaves		54
Tax for Interest on R. R. Bonds	17	17
Totals	1 00	1 00

1863.

Valuation of Real Estate		$ 86,414,860
Valuation of Personal Property		14,454,238
Total Valuation		$100,869,098
Ratio of Taxation on every $100.		
City Tax on Real Estate		29
City Tax on Personal Property	83	
Consolidated Tax on Real Estate		54
Tax for Interest on R. R. Bonds	17	17
Totals	1 00	1 00

1864.

Valuation of Real Estate	$ 86,161,045
Valuation of Personal Property	17,234,280
Total Valuation	$103,395,325

Ratio of Taxation on every $100.

City Tax on Real Estate		50
City Tax on Personal Property	1 25	
Consolidated Tax on Real Estate		75
Tax for Interest on R. R. Bonds	25	25
Totals	1 50	1 50

1865.

Valuation of Real Estate	$ 85,234,125
Valuation of Personal Property	13,554,200
Total Valuation	$ 98,788,335

Ratio of Taxation on every $100.

City Tax on Real Estate		50
City Tax on Personal Property	1 25	
Consolidated Tax on Real Estate		75
Tax for Interest on R. R. Bonds	25	25
Totals	1 50	1 50

1866.

Valuation of Real Estate	$100,238,840
Valuation of Personal Property	26,335,925
Total Valuation	$126,574,765

Ratio of Taxation on every $100.

City Tax on Real Estate		65
City Tax on Personal Property	1 30	
Consolidated Tax on Real Estate		65
Tax for Interest on R. R. Bonds	20	20
Totals	1 50	1 50

1867.

Valuation of Real Estate		$109,037,260
Valuation of Personal Property		29,984,869
Total Valuation		$139,022,129
Ratio of Taxation on every $100.		
City Tax on Real Estate		72
City Tax on Personal Property	1 32	
Consolidated Tax on Real Estate		60
Tax for Interest on R. R. Bonds	18	18
Totals	1 50	1 50

1868.

Valuation of Real Estate		$107,913,834
Valuation of Personal Property		22,959,612
Total Valuation		$130,873,446
Ratio of Taxation on every $100.		
City Tax on Real Estate		45
City Tax on Personal Property	1 05	
Consolidated Tax on Real Estate		60
Tax for Interest on R. R. Bonds	20	20
Tax for One Million Loan	25	25
Totals	1 50	1 50

1869.

Valuation of Real Estate		$106,259,295
Valuation of Personal Property		21,683,486
Total Valuation		$127,942,781
Ratio of Taxation on every $100.		
City Tax on Real Estate		23
City Tax on Personal Property	85	
Consolidated Tax on Real Estate		62
Tax for Interest on R. R. Bonds	16	16
Tax for One Million Loan	49	49
Totals	1 50	1 50

Filed January 28, 1878.

DEPARTMENT OF ASSESSMENT,
New Orleans, January 3d, 1877.

STATEMENT OF THE ASSESSMENT OF REAL ESTATE AND PERSONAL PROPERTY FOR THE YEARS 1870, 1871, 1872, 1873, 1874, 1875, 1876 and 1877, IN THE 1ST, 2D, 3D, AND 4TH MUNICIPAL DISTRICTS.

YEARS.	DISTRICTS.	REAL ESTATE.	PERSONAL PROPERTY.	TOTAL.	RATE OF TAXATION.	
1870	First.....	$50,986,125	$16,148,140	$67,134,265	Consolidated on Real Estate	60
"	Second.....	29,870,975	5,118,102	34,989,077	Other purposes on total assessment	1.40
"	Third.....	10.693,723	809,005	11,502,728		
"	Fourth.....	14,683,995	909,416	15,593,411		2 p. c.
		$106,234,818	$22,984,663	$129,219,481		
1871	First.....	49,953,625	16,172,837	66,126,462	Consolidated on total assessment..	46¾
"	Second.....	29,000,275	4,982,891	33,983,166	Other purposes " " ..	2.28¼
"	Third.....	11,057,389	851,879	11,909,268		
"	Fourth.....	14,850.695	1,099,766	15,950,461		2¾ p. c.
		$104,861,984	$23,107,373	$127,969,357		

STATEMENT OF THE ASSESSMENT OF REAL ESTATE, ETC., (Continued).

YEARS.		DISTRICTS.	REAL ESTATE.	PERSONAL PROPERTY.	TOTAL.	RATE OF TAXATION.	
Tax 1873	1872	First.....	$ 48,412,735	$17,243,286	$ 65,656,021	Consolidated on total assessment.. 21.43	
	"	Second....	28,330,885	4,562,235	32,893,120	Other purposes " " ..278.57	
	"	Third.....	11,235,904	992,424	12,228,328		
	"	Fourth....	14,676,895	903,223	15,580,118		3 p. c.
			$102,656,419	$23,701,168	$126,357,587		
Tax 1874	1873	First.....	$ 46,895,565	$16,890,483	$ 63,786,048	Consolidated on total assessment.. 20.70	
	"	Second....	27,137,205	4,101,818	31,239,023	Other purposes " " ..219.30	
	"	Third.....	11,283,947	898,685	12,182,632		
	"	Fourth....	13,428,904	800 110	14,229,014		2½ p. c.
			$ 98,745,621	$22,691,096	$121,436.717		
Tax 1875	1874	First.....	$ 42,131,225	$14,362,421	$ 56,493,646	Consolidated on total assessment.. 22.85	
	"	Second....	24,407,215	3,241,615	27,648,830	Other purposes " " ..227.15	
	"	Third.....	10,665,815	758,390	11,424,205		
	"	Fourth....	12,351,454	981,119	13,332,573		2½ p.c.
			$ 89,555,709	$19,343,545	$108,899,254		

STATEMENT OF THE ASSESSMENT OF REAL ESTATE, ETC., (Continued).

YEARS.		DISTRICTS.	REAL ESTATE.	PERSONAL PROPERTY.	TOTAL.	RATE OF TAXATION.
Tax 1876	1875	First.....	$39,604,400	$14,721,135	$ 54,325,535	For all purposes on total assessment.....1½ p. c.
	"	Second....	24,385,600	3,342,770	27,728,370	
	"	Third.....	10,780,280	735,190	11,515,470	
	"	Fourth	14,481,345	818,401	15,299,746	
			$89,251,625	$19,617,496	$108,869,121	
Tax 1877	1876	First.....	$37,281,700	$14,059,495	$ 51,341,195	For all purposes on total assessment .....1½ p. c.
	"	Second.....	22,191,000	2,916,080	25,107,080	
	"	Third.....	10,387,905	654,750	11,042,655	
	"	Fourth	12,055,685	590,850	12,646,535	
			$81,916,290	$18,221,175	$100,137,465	
Tax 1878	1877	First.....	$36,611,165	$17,187,620	$ 53,798,785	For all purposes on total assessment .....1½ p. c.
	"	Second.....	21,578,925	2,792,295	24,371,220	
	"	Third.....	9,497,765	639,282	10,137,047	
	"	Fourth.....	12,374,530	800,828	13,175,358	
			$80,062,385	$21,420,025	$101,482,410	

DEPARTMENT OF PUBLIC ACCOUNTS,
New Orleans, December 31, 1877.

Statement of Bonded and Floating Debt of the City of New Orleans.

December 31,	1852	$*8,736,238 61
"	" 1853	8,425,217 46
"	" 1854	12,267,123 12
"	" 1855	11,960,873 22
"	" 1856	11,955,149 70
"	" 1857	11,798,443 65
"	" 1858	11,659,172 25
"	" 1859	11,455,940 25
"	" 1860	11,258,847 56
"	" 1861	11,647,700 63
"	" 1862	12,453,785 63
"	" 1863	12,890,127 41
"	" 1864	13,064,838 68
"	" 1865	13,389,247 56
"	" 1866	13,858,413 00
"	" 1867	14,643,275 75
"	" 1868	16,275,383 66
"	" 1870	18,367,896 24
"	" 1871	19,398,866 00
"	" 1872	22,245,978 00
"	" 1873	22,329,696 18
"	" 1874	24,741,765 87
"	" 1875	23,233,717 16
"	" 1876	22,638,779 21
June 30, 1877		21,894,714 74
December 31, 1877		21,691,755 91
Old City Debt		2,922,760 00

J. CALHOUN, Sec'y Board Liquidators.

*Controller's Report, March 27, 1852.

PETITION, ANSWER, VERDICT AND JUDGMENT.

Filed May 16, 1877.

Augustus R. Montgomery	United States of America.
vs.	Circuit Court of the United States Fifth Circuit and District of Louisiana.—No. 8224.
City of New Orleans.	

PETITION.

To the Honorable Judges of the Circuit Court of the United States for the Fifth Judicial Circuit and District of Louisiana.

The petition of Augustus R. Montgomery, a citizen of the State of New Jersey, with respect represents,

That the City of New Orleans, a municipal corporation, created by the laws of the State of Louisiana, and a citizen of said State, having its domicil in the Parish of Orleans, in said State, and whereof Edward Pilsbury is Mayor, is justly and truly indebted in the full sum of ten thousand three hundred and eighty dollars with interests and costs for this, to-wit:

That your petitioner is holder and owner of three hundred and forty-six (346) certain coupons, detached from bonds of the City of New Orleans, known as "Old Consolidated Bonds" issued by said city in compliance with and in conformity to an act of Legislature of the State of Louisiana, approved 23d February, 1852, being Act 71 of the session acts of 1852.

That each and every of said coupons are now past due and owing, and remain unpaid though duly demanded.

That said coupons are each issued for the sum of thirty dollars, are payable to bearer and are signed by the then Treasurer of said City of New Orleans, and are each numbered and mature as set forth in the annexed schedule thereof, which is made part hereof.

Petitioner further represents that under said act of the Legislature of 1852, Number 71, the said City of New Orleans was directed and commanded under special contract with the holders of any bonds or coupons, issued under the provisions of said act to levy an annual tax, to meet the payment at maturity of said coupons, and to provide a sinking fund to take up the said bonds as they respectively mature, which said contract has been

decreed to be valid and subsisting by final decree of this Honorable Court in the suit entitled Rosalie Maenhaut et als. versus The City of New Orleans, Number —— of the Docket.

Amicable demand without avail is hereby alleged.

Wherefore your petitioner prays the City of New Orleans, through Edward Pilsbury, Mayor, be cited to appear and answer this petition, and after due proceedings that your petitioner do have and recover judgment against said City of New Orleans in said sum of ten thousand three hundred and eighty ($10,380) dollars, with five per cent. per annum interest on the following sums from the following dates, viz: On

$4,980	from	July 1st, 1876.
5,010	"	January 1st, 1877.
30	"	February 1st, 1876.
60	"	August 1st, 1876.
60	"	February 1st, 1877.
120	"	June 1st, 1876.
120	"	December 1st, 1876.

And your petitioner further prays that all the rights, actions and remedies secured to him under and by virtue of the Act, Number 71, of 1852, approved 23d February, 1852, be reserved to him in the premises.

And he prays for costs and for all general relief.

(Signed) HORNOR & BENEDICT,
Attorneys.

Schedule annexed and made part of the foregoing petition:

Coupons of Old Consolidated Bonds.

166	Coupons due	July 1st, 1876	$ 4,980
167	"	January 1st, 1877	5,010
1	"	February 1st, 1876	30
2	"	August 1st, 1876	60
2	"	February 1st, 1877	60
4	"	June 1st, 1876	120
4	"	December 1st, 1876	120
346		Total	$10,380

10

ANSWER.

Filed May 28th, 1877.

Augustus R. Montgomery
vs.
City of New Orleans.

No. 8224.
U. S. Circuit Court.

Now comes defendant, and for answer to plaintiff's petition denies all and singular the allegations thereof.

Whereof she prays to be hence dismissed with costs and general relief.

(Signed) B. F. JONAS,
City Attorney.

VERDICT.

Extract from Minutes.

April Term, 1877.

New Orleans, Wednesday, June 6th, 1877.

Court met pursuant to adjournment. Present—Hon. Edward C. Billings, District Judge.

Augustus R. Montgomery
vs.
City of New Orleans.

No. 8224.

This cause came on for trial.

Hornor & Benedict for plaintiff.

B. F. Jonas, City Attorney, for defendant, not present.

When the following jurors were called and sworn to try the issue:

1. T. Mulligan,
2. G. Luminais,
3. M. J. Halligan,
4. J. B. Cable,
5. P. McBride,
6. Gus Leefe,
7. Isaac Bohn,
8. Chas. A. Baquie,
9. Numa Liautaud,
10. H. W. Van Rose,
11. Jno. Glynn, Jr.,
12. P. F. Curley.

And the Jury being complete, J. B. Cable was appointed foreman, and the trial proceeded and after hearing the pleadings and evidence, and receiving a charge from the Court, the cause

was submitted to the jury, who delivered the following verdict, viz.:

We, the Jury, find verdict for plaintiff and against the defendant for ten thousand three hundred and eighty dollars ($10,380), with interest as prayed for.

Whereupon it was ordered that the same be recorded.

JUDGMENT.

Extract from Judgment Book.

April Term, 1877.

New Orleans, Wednesday, June 6th, 1877.

Court met pursuant to adjournment. Present—Hon. Edward C. Billings, District Judge.

Augustus R. Montgomery
vs. No. 8224.
City of New Orleans.

By reason of the verdict and in accordance therewith, it is ordered, adjudged and decreed that the plaintiff, Augustus R. Montgomery, do have and recover from the City of New Orleans, a municipal corporation created by the laws of the State of Louisiana, the sum of ten thousand three hundred and eighty dollars with five per cent. per annum interest on the following sums from the following dates, viz.: On $4980 from July 1st, 1876; on $5010 from July 1st, 1777; on $30 from July 1st, 1876; on $60 from August 1st, 1876; on $60 from February 1st, 1877; on $120 from June 1st, 1876; on $120 from December 1st, 1876, and costs of suit, reserving to plaintiff all the

rights, actions and remedies to him under and by virtue of Act No. 71, of 23d February, 1852.

Judgment rendered June 6th, 1877.

Judgment signed June 11, 1878.

(Signed) EDWARD C. BILLINGS,

Judge.

CLERK'S OFFICE.

I certify the foregoing nine (9) pages form a true and correct copy of the petition, answer, verdict and judgment in the cause entitled "Augustus R. Montgomery vs. The City of New Orleans, No. 8224 of the docket of this Court.

Witness my hand and seal of said Court at City of New Orleans this 29th day of January, 1878.

F. B. VINOT,

Deputy Clerk.

SUBMISSION OF CASE.

Extracts from Minutes, February 4th, 1878.

This case, continued to this day for argument, was called.

Present: Counsel for all parties.

When, after hearing concluding argument of counsel, the case was submitted, with leave to counsel to file briefs.

STATE OF LOUISIANA.

Third District Court

No. 25,072.

STATE OF LOUISIANA ex Rel.
SOUTHERN BANK

vs.

E. PILSBURY, Mayor, et als.

COUNSEL ENGAGED IN THE CASE:

Messrs. JOHN A. CAMPBELL,
E. BERMUDEZ, } *For Relator.*

Messrs. H. N. OGDEN,
THOS. J. SEMMES,
JOHN FINNEY,
E. W. HUNTINGTON,
W. W. HOWE,
J. C. EGAN, } *For Intervenors.*

Messrs. B. F. JONAS,
H. C. MILLER, } *For Defendants.*

The following opinion was delivered by his Honor F. A. MONROE, Judge, on the 26th March, 1878.

The Relators, as the holders of some six hundred Bonds, known as the Consolidated Bonds of the City of New Orleans, pray that a writ of *mandamus* issue directing the Mayor and Administrators of said City to assess and, hereafter, collect and apply to the payment of said Bonds, principal and interest, as provided by Section 37, of Act 71 of 1852, and Act 72, supplemental thereto, a special tax of $650,000 for each of the years 1874, 1875, 1876, 1877, 1878, less the Coupons paid for 1874 and 1875; and that a writ of injunction issue, restraining these officers from levying any tax on the real estate subject to the special tax in favor of the consolidated loan debt under said Section 37, to the prejudice of said Consolidated Debt, and without first providing therefor.

The history of these Bonds and of the tax thus sought to be enforced is briefly as follows, as it appears from pleadings and evidence in this case:

The City of New Orleans was incorporated by the first Legislature which assembled under the government provided for the Territory of Orleans, in 1804-5, and the charter thus provided continued in force until 1836, when an act was passed dividing the City into three municipalities (Acts of 1836, p. 28)—each of which was created a separate and distinct corporation, with all the powers and liabilities incident

thereto, except such as were expressly reserved to what was called the General or City Council.

Provision was made in this act for the city debt existing at the time, which was placed under the control of a board to consist of the Mayor and six commissioners, composed of two members from each corporate council—the quota to be paid by each municipality being fixed upon the basis of the taxes and other revenue accruing to each.

By a supplemental act, approved a few days after the one first referred to, it was expressly provided (to quote the language): "That if the law, to which this is a supplement, should by any future legislature be repealed or so amended as to reunite the said three municipalities, created by said act, into one corporation, all the debts created by each of the said municipalities shall first be fully paid and satisfied by each municipality respectively," etc. This form of government endured until 1852, when the consolidation of the three municipalities was effected and their individuality destroyed by an act approved February 23, of that year.

The act in question was entitled "An act to consolidate the City of New Orleans, and to provide for the government and administration of its affairs." And it is upon Section 37 of this act that the Relators have founded their action. This Section reads as follows, to wit:

"Sec. 37. That the debt of the general sinking fund, commonly called the Old City Debt, and the

Debt of the three municipalities, whether in the form of bonds, notes, interest coupons, cash warrants, or any other species of obligation whatever, shall be assumed and paid by the City of New Orleans, and said City is hereby declared liable therefor. The Mayor, Controller and Treasurer, and the chairman of the finance committees of the boards of the Common Council shall constitute a commission to be called the Commissioners of the Consolidated Debt of New Orleans, and they shall have power to issue Bonds of the City of New Orleans, having not more than forty years to run, with interest, payable at such place as may be agreed on between said commissioners and the parties to whom the Bonds are issued, in semi-annual Coupons, in exchange for any Bonds, obligations or other debts of the old corporation, or of any of the municipalities, whether matured or not; or to sell the new Bonds and apply the proceeds to the payment of the matured debts of the old corporation, or of any of the municipalities, but to no other purpose. The Bonds thus issued shall form a stock to be called the Consolidated Debt of New Orleans. At the time this act goes into operation an exact and detailed statement of the indebtedness of the old corporation and of each municipality shall be filed in the office of the Controller by the Secretary of the board of liquidation and the municipal Controller respectively, when the commissioners of the consolidated debt shall proceed to divide the debt of the old corporation between the several munici-

palities, in proportion to the assessed value of real estate within the limits of each, according to the State assessment roll of 1851. The amount thus apportioned to each, together with its individual indebtedness at the time this act goes into operation, shall constitute the separate debt of each municipality, and shall be known as the debt of Municipality No. 1, No. 2, No. 3. The Common Council shall annually, in the month of January, pass an ordinance to raise the sum of $600,000 by a special tax on real estate and slaves, to be called the consolidated loan tax: and the rate per cent of said tax in each municipality shall be in proportion to the indebtedness of each. All ordinances, resolutions or other acts passed by said Council after the first day of January in each year shall be null and void, unless the ordinance imposing the consolidated loan tax shall have been previously passed; at the end of each and every year any surplus of the consolidated loan tax remaining in the treasury after the payment of all the interest and expenses of the management of said debt, shall be applied to the purchase, from the lowest bidder, of such Bonds issued under this act as have the shortest period to run; and the Common Council shall have the right of rejecting all bids demanding more than the face of the Bonds: for which purpose public notice shall be given by the Controller in the official gazette for thirty days, inviting proposals from Bondholders for the sale to the City of the Bonds herein described. From and after the passage of this act,

no obligation or evidence of debt of any description whatever, except those herein authorized, shall be issued by the City of New Orleans, or under its authority ; nor shall any loan be contracted, unless the same be authorized by a vote of a majority of the qualified voters of said City, which shall be taken in the manner prescribed by the City Council, after ten days' proclamation by the Mayor in the newspaper chosen by the Common Council ; and no ordinance creating a debt or loan shall be valid unless for some single object or work distinctly specified therein, and unless such ordinance shall provide ways and means for the punctual payment of running interest during the whole time for which such debt or loan shall be contracted, and for the full and punctual discharge at maturity of the capital borrowed or debt incurred ; and such ordinance shall not be repealed until principal and interest of the capital borrowed or debt incurred are fully paid and discharged."

By act No. 72 of the same year, the City of Lafayette was added to the City of New Orleans, the City of New Orleans assumed its debt, and an additional $50,000 per annum was required to be raised, thus making the total annual levy $650,000.

The Relator as a free Bank, was compelled by law to invest in the Bonds issued in pursuance of the foregoing Section, to secure its circulation, and, as it appears, owns over six hundred of them.

No complaint is made of the manner in which the

provisions of the Section quoted were complied with until 1874, when an act was passed, entitled "An act to postpone the levy and collection by the City of New Orleans of a tax for sinking fund for the purchase of its Bonds; to authorize the administrators to modify the last budget and tax levy, and to repeal conflicting laws and penalties."

This act was No. 53 of 1874, and its object was to relieve the City of New Orleans until December, 1876, from levying or collecting any tax for a sinking fund for the purchase of Bonds issued under Section thirty-seven of the Act of 1852.

By Act No. 31, of 1876, however, entitled "An act to adjust, regulate and provide for the bonded debt of the City of New Orleans," etc., the issue of certain other bonds, known as Premium Bonds, was authorized and it was provided as follows, to wit:

"Sec. 7. *Be it further enacted, etc.*, That no tax for the payment of Bonds or interest on Bonds other than that authorized by the preceding Sections shall be levied either for the year 1876, or any year or years thereafter, by the City of New Orleans, and that all existing laws requiring or authorizing the City Council to levy any tax whatsoever for Bonds or interests on Bonds, other than said Premium Bonds be and are hereby repealed; and it shall be hereafter incompetent for any Court to *mandamus* the officers of said City to levy and collect any interest tax other than that provided by this act, or in case of such *mandamus*, by a receiver or otherwise, to direct the levy and collection of any such tax.

Considering the two acts last quoted, and other matters set up, the City of New Orleans has since 1874 failed to provide for the sinking fund, and since 1876 has failed to provide in any way for the Consolidated Debt, hence this litigation.

For exception and answer to the petition the Mayor and Administrators of the City of New Orleans say :

First—That this Court is without jurisdiction to issue the writs prayed for, for this, to wit :

That by the provisions of Act No. 5 of 1870, and of Act No. 31 of 1876, the Courts of this State are prohibited from issuing any writ of *mandamus* to compel Respondents to pay any debt not liquidated by judgment or to compel them to levy and collect any interest tax other than that provided for in said Act No. 31 of 1876.

Respondents further plead the provisions of said Acts 31 of 1876, and 53 of 1874, which have been quoted, and they aver, moreover, that the Act 71, of 1852, under which Relators claim, (and especially Section 37) is null and void for this, to wit :

That said act is violative of article 118 of the constitution of 1845, which requires that no law shall embrace but one object, which shall be expressed in the title.

That it is violative of articles 127 of said constitution of 1845, and 123 of the constitution of 1852, requiring taxation to be equal and uniform.

In addition to the Relators and Respondents,

certain other persons have appeared in this suit by way of interventions, which are substantially as follows:

John J. Weckerling and others, claiming to be the owners of real estate in the First, Fourth and Sixth Districts of this city, which will be affected by the tax sought to be imposed, set up that interest, and pray that Relators' petition be dismissed.

Thomas H. Hunt, claiming to be the owner of some of the Bonds issued under and by virtue of Act No. 31, 1876, also joins the Respondents in the prayer that Relators' petition be dismissed.

The State of Louisiana, claiming an interest in Consolidated City Bonds, joins in the prayer of the Relator for the writs of *mandamus* and injunction.

H. W. Montgomery, John R. Clay and others, set up an interest as owners of real estate, which will be affected by the tax, and join Relators to the extent of asking the levy of the tax for the years beginning with 1878, and thereafter, but deprecate any attempt to collect such tax for past years.

The applications of Messrs. Weckerling and Hunt for permission to intervene having been made in open Court, counsel for Relators objected upon the grounds:

1. That interventions could not be allowed in *mandamus* proceedings such as that before the Court.

2. That no intervention can be allowed unless the party shows a direct interest, which would be irrepa-

rably injured by the result, and unless such party could bring a direct suit to recover the object of the intervention.

These objections having been overruled, a bill of exceptions was taken.

Objection was also made to the filing by the Respondents of a supplemental and amended return, and a bill of exceptions was reserved to similar ruling of the Court.

Subsequently counsel for Relators filed a motion to strike out the returns made by Respondents upon the grounds:

1. Because they embrace irrelevent and scandalous matter relative to the procurement of the passage of Act No. 53 of 1874.

2. Because Respondents, as ministerial officers, have no interest and no right to assail the constitutionality of the Act of 1852, such objections being appropriate only to those from whom the tax, when levied, may be sought to be collected.

3. Because said returns set up prohibitory acts which either have no application or are in violation of the constitution of the United States.

4. That Respondents are estopped from denying the validity of the Bonds held by Relators by reason of the fact that such validity has been formally recognized by legislative enactments and by a final judgment in the case of Maenhaut vs. New Orleans, No. 7423 of the docket of the United States Circuit Court for this district, which is invoked as *res judicata.*

5. Because the said returns are inconsistent and self-destructive, in this: that they admit the levy and collection of the tax in question under Section 37 of the Act of 1852, and yet set up the unconstitutionality of said Act.

6. Because the charter of the City recognizes the validity of said Consolidated Debt.

It was further moved to strike out the intervention of those parties who joined the Respondents, upon the grounds which have been mentioned as grounds of objection to the filing of said interventions, and on the additional grounds:

That said intervenors cannot urge other defenses than those set up by Respondents.

That said intervenors have no authority to represent the City of New Orleans, and are estopped from assailing the constitutionality of the acts relied on by Relator, for the reason that the validity of the same has been recognized by the State and by judgments as already stated.

Considering this motion, first, in so far as it relates to the returns filed by Respondents: if the position of Relator's counsel be correct, that the Mayor and Administrators of the City of New Orleans have no interest, and therefore no right to urge the defenses set up in their return, that no citizen of New Orleans can intervene as a tax payer to resist the demand made, until the tax in question is actually sought to be collected, and that no holder of Premium Bonds, the tax for the payment of the interest on which is

sought to be enjoined, can intervene, as not having a direct interest, the question arises, who, if any one, can defend this action?

It is argued that the intervenors have no title to appear, for the reason that the City corporation represents all the members of the corporation. It is evident then that the City corporation is the party defendant before the Court, and that these proceedings are directed against the Mayor and Administrators not merely in their ministerial but in their representative capacity.

The prayer of the petition is, that the said Mayor and Administrators be directed to levy and collect a certain tax; that they be enjoined from levying other taxes; that the City of New Orleans and said Mayor be notified of these proceedings; that the right of Relators to personal process and to damages against said officers on their official bonds be reserved, as also their right to a writ of distringas against their revenues and the revenues of the City of New Orleans.

The Respondents are therefore not before the Court merely as executive officers without interest in the result, but as constituting the corporation of the City of New Orleans, whose revenues are the subject of the controversy. The plea of *res judicata* set up by the Relators is an admission of this fact, since the suits of "Maenhaut" and "Montgomery", relied on, are both of them suits in which the City, and not the individuals or officers named as Mayor and

Administrators, was the party defendant. It is the City of New Orleans, brought before the Court by the act of the Relators, who opposes their demand, and who, being the party in interest, is entitled to set up any defense against which there is no estoppel.

A case has been referred to (27 A. 430), where it was held, upon an application for a *mandamus* against the State Auditor, that he had no interest in assailing the constitutionality of the laws under which the application was made. It does not appear, however, that the State was made a party to that proceeding; and, whilst the Auditor may have been without authority to set up such a defense in behalf of the State, it by no means follows that the defense could not have been urged by the State if made a party to the suit.

The same thing may be said of the case cited from 11 A. 672, where the defendant in the *mandamus* proceeding was the Sheriff. The Court said: "The right of this executive officer to raise these constitutional objections is by no means clear," etc. The Sheriff in that case represented neither the parish of Avoyelles nor the citizens of that parish; his duties were defined by law, and did not include the obligation to represent any one concerned in that suit in judicial proceedings.

So far as concerns the conflict between the Act of 1852 under which the Relators claim, and the subsequent Acts and more particularly Act No. 53 of 1874 and Act No. 31 of 1876, unless it be conceded

that the Mayor and Administrators are vested with judicial powers, and have the right to decide upon the constitutionality of statutes duly enacted by the Legislature, it would seem to be their plain duty to submit such questions to some competent authority for determination ; and in case of non-interference by those interested, or in case no such determination as that indicated is reached, it is proper that they should be governed by the latest expression of legislative will. Where, as in this case, the propriety of their action is called in question, it is not only their right but their duty, and this whether they appear in a representative or in a ministerial capacity, to exhibit to the Court the authority or the prohibition under which they act or refuse to act.

It is claimed, however, that Respondents are estopped from denying the validity of the Bonds held by the Relators.

First—By the formal recognition of the validity of said Bonds by legislative enactments.

Second—By the judgments rendered in the cases of Maenhaut, and of Montgomery vs. the City of New Orleans, by the Circuit Court of the United States for this district, which are pleaded as *res judicata*.

This plea of estoppel is neither more nor less than a peremptory exception founded on law, and may be so treated. The remedy of striking out pleadings, unless obviously scandalous, impertinent or irrelevent, is not favored under our practice, and, for

reasons just assigned, is refused as to the returns made by the Defendants.

The motion to strike out, as has been stated, includes the interventions of those who join with the Defendants in their defense and prayer: and as to the intervenors, the additional ground is suggested that they have no direct and immediate interest in the result of this proceeding, and, furthermore, that interventions are not permissible in *mandamus* proceedings.

Upon this subject, under the Code of Practice, the right to intervene is governed by the interest of the party, and not by the character of the proceeding. It is expressly provided that the intervention shall not retard the principal suit; and although delays have been allowed to intervenors in some instances, it is not to be presumed that the Courts will permit an abuse of the privilege. Certainly no such cause of complaint has been given in this case. The question then is whether the intervenors have shown the interest contemplated by law.

It will be remembered that the intervention of Messrs. John J. Weckerling, Jesse K. Bell and others is based upon their ownership of real estate which may be subjected to the tax for the imposition of which this proceeding has been instituted.

As was said in the case of "Roudanez vs. the Mayor," etc., 29 A. p. 273:

"If the City of New Orleans should, by vote or otherwise, seek to extort from the plaintiff illegal or

unconstitutional taxes, whether to pay for election or other purposes, they will have ample opportunity to protect themselves through the Courts. But "sufficient unto the day is the evil thereof."

So it may be said in this case. For the purposes of this writ the City corporation represents all the members of the corporation; it was for that purpose that the corporation was created, and it is for that purpose that it is before the Court. As to the intervention of Weckerling and others, the motion to strike out must therefore prevail.

The intervention of Thomas H. Hunt, against which the motion is also directed, is based upon different grounds. He appears as the holder of certain Bonds issued under and by virtue of Act No. 31 of 1876; not as a member of the corporation defendant, but, like the Relators, as a creditor of that coporation, whose claims conflict with that of the Relators. The immediate effect of the judgment prayed for may be to inhibit the collection of the tax provided for the payment of the principal and interest of his Bonds in the event that the collection of such tax is prejudicial to the Relators' claim. He has, therefore, manifestly an immediate and direct interest in defeating that result. The motion as to this intervention must therefore be overruled.

Reverting to the question of estoppel as set up against the Respondents, in the motion to strike out so much of the return as attacks the validity of the Bonds held by Relators, and in the plea of *res judicata*,

it may be remarked that no serious attack has been made upon the validity of the Bonds—in fact, it was substantially admitted in the argument of the case that they are valid obligations of the City, nor have any of the arguments adduced for the purpose of defeating the methods here resorted to of enforcing the payment of said Bonds been based upon their supposed invalidity. It is true that the return made by the Respondents sets up the unconstitutionality of the Act of 1852 upon specific grounds, and concludes with the averment that "all acts or parts of acts passed since 1852, and which Relators allege recognize the Bonds and tax specified in said thirty-seventh Section of said Act of 1852, in so far as said recognition is concerned (if such was their purpose), are upon the same grounds wholly unconstitutional, null and void.

It seems that since 1852 fourteen Acts have been passed by the Legislature, in which these Bonds have been referred to or recognized distinctly as valid obligations of the City of New Orleans. These acts include the various charters of the City down to the present one, under which it lives and moves and has its being, and also includes Act No. 53 of 1874, the provisions of which are set up by Respondents as a defense to this proceeding. In that act the following language is used :

"And provided further, That the validity of the Consolidated Bonds of the City of New Orleans is hereby recognized in all its integrity, it being the

object of this act to afford temporary relief to the tax payers of New Orleans in the embarrassed condition of affairs, and not to detract from or impair the rights of the holders of said Bonds or others."

The Court does not understand the Counsel for the Respondents as using this act as a defense and at the same time attacking its constitutionality. Nor does the Court understand the Respondents as attacking their own corporate existence, and yet the charter of the City of New Orleans recognizes the validity of the Consolidated Bonds in terms almost as distinct as those above quoted.

Beyond this, it is averred by the Respondents that "tax to pay the interest on said Consolidated Bonds was regularly assessed and collected until the year 1876, when it was prohibited by the provisions of said Act No. 31 of 1876."

Such an averment of acquiescence during a period of twenty-five years, may well be regarded as estopping a denial, at this time, of the validity of these Bonds.

See Bigelow on Estoppel 582, 28 Ark., 558.

Referring to the cases in which judgments are required, establishing the validity of the debt as a preliminary to the issuance of the writ of *mandamus*, we find in Burroughs on taxation, p. 451 (§ 144), the following:

"If the debt be an ordinary debt, one as to which there is no special provision made by law, it must be first reduced to a judgment by an action at law," etc. And further on, at page 453, he continues:

"There is an exception to the rule that judgment must be first obtained before an application for a *mandamus* will be entertained. It is in that class of cases where, by the statutes creating the debt, as in the case in Bonds in aid of railroads, it is made the duty of certain officers to levy a tax for the purpose of paying such Bonds. Here there is a clear legal duty upon the officers to make the levy, and there is no other remedy for a failure to perform such duty but a *mandamus*, and there is no necessity for a judgment to ascertain the amount due."

The author goes on to say that when a doubt is suggested as to the validity of the Bonds, the party will be required to establish his claim by judgment.

As has already been indicated, the Court is of opinion that a reasonable construction of the pleadings in this case, taken in connection with the able and exhaustive arguments, both oral and written, which have been submitted, does not justify the conclusion that the doubt suggested by the answer of the Defendants was intended to go beyond the question of the validity of the tax and the method of its enforcement, and does not affect the validity of the Bonds.

It is urged, however, that the decisions in the cases of "Maenhaut," and of "Montgomery vs. the City of New Orleans," decided by the Circuit Court of the United States, are conclusive against Respondents, not only as to the validity of the Bonds, but as to the validity of the tax here claimed.

The first of these points it is unnecessary further to consider.

The question decided in the case of "Maenhaut" was that an injunction would lie upon the application of bondholders to restrain the City from misappropriating a fund collected and in bank to the credit of the Consolidated Bonds. That fund was certainly not collected under the Act of 1852, nor was it necessary for the purposes of that proceeding that it should have been. It was sufficient that it was imposed by law, and collected and held in trust for the parties who claimed it. It was, however, collected upon a very different basis of assessment from that provided by the Act of 1852, and whether the particular method of collection provided by that act could have been enforced was not before the Court, and formed no part of the decree.

The suit of Montgomery was an ordinary one upon unpaid coupons, to which, as far as the Court is informed, the Relators were not parties. The method of enforcing the judgment obtained by Mr. Montgomery was not discussed, his rights, whatever they may be, under the Act of 1852 were reserved to him. The case has, therefore, no element of *res judicata*, as against the defense here set up, other than the cause of action—and it may be doubted whether even this was identical with that on which this suit is based, since the coupons are not the same as those held by the Relators.

These preliminary questions having been thus

disposed of, the case may be considered upon its merits.

The claim of the Relators is to enforce by *mandamus* the provisions of the thirty-seventh Section of Act No. 71, of 1852, in so far as to compel the proper officers of the City of New Orleans to levy a tax for the payment of the principal and interest of their Bonds in the manner provided by that Section, and further to enjoin the imposition and collection of any other tax to the prejudice of that, the collection of which they seek to enforce.

It is objected that the provisions relied on are unconstitutional, because the objects of the act are not expressed in the title, and because the tax provided for is not equal and uniform.

First—The title of the act in question reads as follows :

" An act to consolidate the City of New Orleans, and to provide for the government and administration of its affairs."

It has been already stated that in 1836 the City of New Orleans was divided into three municipalities ; for many purposes totally distinct, and yet, to some extent, held together by a common bond. The title of this act was :

" An act to amend the act entitled An act to incorporate the City of New Orleans," etc. The existence of the City of New Orleans was not totally destroyed, but the form of government was changed. The three municipalities into which it was divided

were characterized as "Municipalities of the City of New Orleans," (See Section 8.) and provision was made for a common Mayor, having the same power, in each of the municipalities, as he then possessed in the entire City, with such exceptions as were expressly provided. (Section 2.) Each municipality, however, had the power to contract debts, and they availed themselves of the privilege, so that when they were consolidated again in 1852, they seem to have been considerably involved.

The question then is, does not the title of the act under which this consolidation was effected sufficiently convey the idea of its object so far as these debts were concerned.

Cooley in his work on Constitutional Limitations, p. 143, says, in regard to provisions such as that relied on :

"It may, therefore, be assumed as settled that the purpose of these provisions was : First, to prevent hodge-podge or "log-rolling" legislation ; second, to prevent surprise or fraud upon the Legislature by means of provisions in bills of which the titles gave no intimation, and which might, therefore, be overlooked and carelessly and unintentionally adopted ; and, third, to fairly apprise the people through such publications of legislative proceedings, as is usually made, of the subjects of legislation that are being considered, in order that they may have opportunity of being heard thereon, by petition or otherwise, if they shall so desire."

The provisions of Section 37 of the Act of 1852 are certainly not obnoxious to the constitutional provision for any of the reasons above stated. It can not be called *hodge-podge* or "log-rolling" legislation, and it is strictly germain to the administration of the affairs of the City of New Orleans to which the title of the bill related. The status of the City was fixed by legislative enactment, and the Legislature and the people must be supposed to have known the laws by which they were governed. It could have been no secret to them that the City of New Orleans had been divided, sixteen years before, into three municipalities, and that those municipalities had contracted debts which must be discharged; when, therefore, an act was passed providing for the consolidation of the City, and for the government and administration of its affairs, it is difficult to perceive how any one could be taken by surprise that such an act should contain provisions concerning the obligations of the City and of its divisions, thus consolidated. No more important affairs than the settlement of these obligations were to be administered. In fact, if we consult the legislation and jurisprudence of the day, it would seem that the condition of these particular affairs provoked the passage of the act.

The "consolidation" of the City certainly conveyed the idea of the obliteration of the distinct divisions of which it was composed, and the individual must have been dull of comprehension indeed, to

whom the idea would not have been conveyed, even by this one word, that some disposition was to be made of the rights and obligations of the corporations thus disposed of. If any doubt could have been left, however, it must have been removed by the additional words "to provide for the government and administration of its affairs"; for, as has already been remarked, the debts of the City and of the municipalities were matters of legislative and judicial history, and constituted the "affairs," which, more than anything else, required "administration." If, therefore, the act had contained no provision on this subject, it might well have been said that the title was deceptive and calculated to mislead, for certainly such were to have been expected.

Numerous authorities have been cited upon this point by the counsel upon either side. The Court will be content with a reference to one of them. In the case of Municipality vs. Michaud, 6 A. 805, the Supreme Court of the State held that it is sufficient, under the constitution, if the object of the act is stated in the title according to the understanding of "reasonable men."

Second—As to the equality and uniformity of the tax imposed by the Act of 1852, the language of the law is that, "The Common Council shall, annually, in the month of January, pass an ordinance to raise the sum of $600,000, by a special tax on real estate and slaves, to be called the consolidated loan tax, and the ratio per cent of said tax in each municipality

shall be in proportion to the indebtedness of each."

[This amount was increased to $650,000 by section eight of Act No. 72 of the same year, by which the City of Lafayette was annexed.]

"At the end of each and every year any surplus of the consolidated loan tax remaining in the treasury, after the payment of the interest and the expenses of the management of said debt, shall be applied to the purchase, from the lowest bidder, of such Bonds issued under this Act as have the shortest period to run."

This law was approved February 25, 1852. The constitution of 1852 was adopted on the 31st of July of that year. The law was therefore under the dominion of the pre-existing constitution of 1845. Act 127 of that constitution provides that: "Taxation shall be equal and uniform throughout the State. After the year 1848, all property on which taxes may be levied, in this State, shall be taxed in proportion to its value, to be ascertained as directed by law No one species of property shall be taxed higher than another species of property of equal value, on which taxes shall be levied. * * * "

The Respondents claim that the tax upon real estate and slaves alone, and the system upon which the tax was imposed upon the different municipalities, was obnoxious to this article of the constitution.

This article of the constitution was first presented to the Supreme Court of the State for interpretation, in 1847, in the case of the Second Municipality of New Orleans vs. Duncan, 2 A. 182.

This was a suit to collect a tax imposed, under an ordinance of the municipality, on all real estate within its limits.

The report of the case embodies a synopsis of the Defendant's argument, in which the points are made :

1. That under the constitution, articles 32 and 127, the power of taxation was vested exclusively in the Legislature ; and

2. (To quote). "Supposing that the municipality enjoyed the unquestionable right to levy taxes for the purpose mentioned in the preamble of the ordinance, yet it is null and void. All taxation must be fair and equal '*so that no one class of individuals and no one species of property may be unduly assessed*,' to use the language of Chancellor Kent, 2 Com. 23."

The decision was rendered by Chief Justice Eustis, who said :

"The objects of the imposition of this tax are within the lawful powers of the municipality and proper subjects of administration. The tax itself is said to be unconstitutional, it being in conflict with article 127 of the constitution of 1845. The article by its very terms applies to State, and not to municipal taxes. It provides for equality and uniformity of taxation *throughout the State*. As an approximation to either of these objects would be impossible without a general valuation of the property to be taxed, the article provides for the postponement of its operation until after the year 1848, thus giving time

for the Legislature to carry into effect a principle which has hitherto been a standing monument of the impotency of civil government, in applying to the complicated facts of society, abstractions, however true, just and important they may be. As we have had occasion to observe recently, in the case of Egerton vs. the Third Municipality, 1 A. R. 435, the framers of the constitution had before them the condition of the municipalities of New Orleans, with their debts, their abuses and their wants, and their corporate existence is recognized and continued, as to certain public rights, by an express provision. The jurisprudence under which the present system of taxation had grown up was before them and the power of remedying the evils of misgovernment was left in *statu quo*, with the Legislature ; and the convention confined itself to providing for the State government, leaving the municipal bodies, as it is believed sound policy justified, under legislative control."

Continuing at page 185, the learned judge says :

"We have no means before us by which we can form an idea of the equality of the taxation by this municipality, in its practical results. We are furnished with no evidence of the mode in which the public burdens operate upon the inhabitants. We have a simple admission, made in the record, "that there is no other special ordinance of the Second Municipality assessing taxes on personal property." We know of no reason imperative on the municipality

to impose their taxes in any particular form, or to include any other species of property in an ordinance imposing a tax on real estate. It constitutes no objection, under any view of the subject, to the validity of this tax, that personal property was not also taxed by special ordinance."

Referring to the power of the Court to control the arbitrary exercise of the right of taxation, and in view of the inapplicability to the municipality of the article 127 of the constitution, the judge said :

" In conclusion, it may not be out of place to state that, as the guardians of the rights and property of citizens, we should fail in our duty if we were to forbear to exercise our power on any proper occasion to protect them from spoliation : at the same time it must be confined to its constitutional limits, and to those cases in which its authority cannot be questioned, and its action will consequently be effectual."

This decision was followed by the decision in the case of Lafayette vs. Cummins, 3 A. 673, decided in December, 1848, where the question involved a sum claimed from the Defendant on account of his trade as a butcher.

In this decision no distinction is made by the Court on account of the sum claimed being for a license ; but the decision in Duncan's case (just cited) was distinctly affirmed, both as to the application of Article 127 to State taxes alone, and as to the right of the corporation to impose a particular tax upon one class of property and not upon another.

In the case of Buffington vs. Dinkgrave, 4 A. 548, the decisions just quoted were referred to as sufficient authority for the dismissal of a claim that a peddler's license was obnoxious to Art. 127 of the constitution.

In the case of Bordelon vs. Lewis, 8 A. 472, the defendants were sued by the school directors of the parish of St. Landry for a special school tax, and the decision in Duncan's case was again quoted with approval.

In the case of the State vs. the heirs of Poydras, 9 An. 165, it was held that the tax of 10 per cent upon property failing to aliens and non-resident citizens was constitutional. The Court, after quoting Article 127 of the constitution, said :

" To be equal and uniform, taxation need not be universal. Certain objects may be made its subjects and others may be exempted from its operation ; certain occupations may be taxed and others not ; so, some occupations may be taxed for a greater amount and others for a less, but as between the subjects of taxation in the same class there must be an equality." The decisions in Second and Third Annuals, already referred to, were again quoted with approval.

It will thus be seen that from 1847, when the question was first presented for decision, down to the case of the State vs. the heirs of Poydras, decided in March, 1854, it was uniformly held that taxation, to be uniform, need not be universal, but that the equality required by the constitution extended only to the particular class of property taxed. The

decision in the case of Duncan was repeatedly quoted with approval, and was certainly entitled to the highest consideration, especially upon the questions involving the interpretation of the constitution of 1845, not only because of the great learning and ability of the Court, but because the decision was rendered within two years after that constitution was adopted, by jurists, who were necessarily familiar with its history, as a contemporaneous act. Nay, more than this. In the dissenting opinion of Judge Slidell in the Benton street case, 9 A. 454, he says of that Court :

" I may add, as not inappropriate to the subject of constitutional interpretation, that three of the judges who occupied seats in the Court which has recently gone out of existence were members of the convention of 1845 among them the late Chief Justice, who was a prominent member of the Judiciary Committee in that convention, and whose recent retirement from the bench I deem a public loss."

The case in which the dissenting opinion thus quoted was rendered, arose out of an attempt to enforce the collection of what, in more modern jurisprudence, is known as a "local assessment." In other words, it was a charge or contribution levied upon the contiguous properties by Municipality No. 2 for the opening of Benton street.

It was held by the Court, Mr. Justice Ogden rendering the decision, that the charge or assessment in question was a tax within the meaning of the constitutional prohibitions.

The learned judge said : Both the exercise of the right of eminent domain and the power of taxation are limited under our constitution, and the rule with us is deduced, not from general principles, but from the constitution itself ; that there does not exist either in the Legislature or in any sub-divisions of State sovereignty a power of apportioning taxation for public purposes, whether of a general or of a local character, except on the principle of equality and uniformity." * * * * * * * * * * * *

From this decision Chief Justice Slidell and Mr. Justice Campbell dissented ; the opinion was, therefore, rendered by a bare majority of the Court, consisting of Justices Ogden, Buchanan and Voorhies. (See Municipality vs. White, 9 A. 454.)

A somewhat similar case, also decided by Judge Ogden, is to be found in the same volume. (Cummings vs. Police Jury 9 A. 503.) This was an injunction suit to prevent the collection of a special tax levied by the Police Jury of Rapides for levee purposes. The Court held that it was violative of Article 123 of the constitution of 1852 (then in force), which is identical with Article 127 of the constitution of 1845.

In the case of Yeatman vs. Crandell, 11 A. 220, plaintiff enjoined the collection of a special tax imposed by the Legislature for levee purposes upon alluvial lands in the parishes of Carroll, Madison and Catahoula. It will be seen, therefore, that this case differed from the one last quoted only in this : that

the tax in the one case was imposed by the Police Jury, and in the other by the Legislature.

The Court, however, (Mr. Justice Spofford rendering the decision) said, in referring to the constitutional provisions under consideration: "This article refers to State taxation in its proper sense, for general or State purposes. When it says that taxation shall be equal and uniform throughout the State, it points directly to its object, which is to regulate the mode of filling the State treasury. * *

"An assessment for levee purposes is not a tax in the strict legal sense of the term, although it is true the Legislature has called it so in the act whose constitutionality is attacked.

"But a principle of equity which exists independent of any constitutional recognition would dictate that the assessment should be made upon the land of each proprietor, as nearly as practicable in proportion to the benefit received.

"To secure an exact equality, in this as in everything else dependent upon human government, is impossible. Perfection in legislation is the dream of visionary minds."

The tax was accordingly sustained, Judge Voorhies, in a concurring opinion, saying:

"I have been led to reconsider the opinion to which I assented in the Benton street case, and in the case of Cummings vs. the Police Jury of the parish of Rapides." The ground of this reconsideration being that he did not consider the provision of

the constitution applicable to municipal or local taxation for local improvements.

The same views were held by the Court in the cases of Surgi vs. Snetchman and Surgi vs. Batalora, 11 A. 387, being suits for local assessments for paving. Also in the case of Jamison vs. New Orleans, 12 A. 346.

In the case of Mrs. Layton vs. New Orleans, 12 A. 515, the plaintiff, a resident of the former City of Lafayette, complained of the act of March 12, 1856, by which it was made unlawful for the City Council to levy any tax whatever, whether on real estate or slaves or movables, except the same be equal and uniform within the entire limits of the City. The *gravamen* of the plaintiff's petition was, that by the Act of 1852 the City of Lafayette was to be taxed for only $50,000. The Court, however, held that *quoad* the City of Lafayette, the Legislature could impose the tax as it deemed proper. What might have been the conclusion, had the objection been made by the City of New Orleans or by the bondholders, does not appear.

In the case of Wallace vs. Shelton, 14 A. 503, being an injunction against a tax for levee purposes, the Court said, in referring to the case just cited :

" In the case of Layton vs. City of New Orleans, 12 A. 515, we said that nothing prevented the Legislature from adopting different principles as the basis of its legislation. When the different municipalities were consolidated into one City, the Legislature

adopted the principle that each municipality had the right to pay its own debts. Subsequently the Legislature adopted the principle that it was equal and just that the City at large should pay the very unequal debts of the different municipalities. *It was not in the power of this Court to say that the legislation was unconstitutional.*

From this somewhat lengthy résumé of the jurisprudence of the State upon the subject under consideration, embracing a period of some twelve years—from 1847, when the decision was rendered in the case of Duncan, by a Court, of which three members appear to have sat in the convention by which the constitution interpreted by them was adopted, down to 1859, when the decision just cited was rendered—it appears that, with the exception of the two cases decided by Judge Ogden (reported in 9 A.) which were soon after overruled, it was uniformly held :

That taxation, to be equal and uniform, need not be universal.

That the Legislature was not prevented by the constitutions of 1845 and 1852 from dividing the objects of taxation into classes (on this point a decision is reported in 10 A., p. 298, State vs. Lathrop), provided the burden was imposed equally upon all those in the same class ; and, to use the language of the Court in the case of Yeatman vs. Crandell :

That " the article (127 of the constitution of 1845) refers to State taxation in its proper sense, for general or State purposes. When it says that taxation

shall be equal and uniform throughout the State it points directly to its object, which is to regulate the mode of filling the State treasury."

It has been argued that the opinion rendered by Chief Justice Eustis in Duncan's case, to the effect that article 127 of the constitution of 1845 did not apply to municipal taxation, is to be regarded as an *obiter dictum*, inasmuch as by its terms that article was not to go into effect until after the year 1848, and could, therefore, have had no bearing on the case decided.

Assuming this view of the subject to be correct, the same objection cannot be urged to the decisions in the cases of Buffington vs. Dinkgrave, (4 An., 548), decided in 1849 : Gillespie vs. Police Jury, decided in 1850, (5 An., 403); Bordelon vs. Lewis, decided in 1853, (8 An., 472); State vs. Poydras, decided in 1854, (9 An., 165), or to that above quoted in Yeatman vs. Crandell, (11 An., 220.) If it be true, as stated in the decision last mentioned, that the object of article 127 of the constitution of 1845 was "*to regulate the mode of filling the State Treasury*," it certainly can have no application to the question now before this Court. The tax imposed under the Act of 1852 was as surely a tax imposed for a local purpose as an assessment for constructing a levee or laying a banquette. It was a tax imposed upon a class of property owned by particular individuals for the purpose of paying a debt which they had contracted. The State at large had nothing to

do with contracting the debt or with the collection of the tax for its payment, so far as the constitutional provision in question is concerned.

For the purposes of this case it is unnecessary to consider what changes have taken place in the jurisprudence of the State since the rendition of the decisions to which reference has been made. They embrace the period during which the Bonds in question were issued and negotiated, and must be regarded as authoritative and conclusive upon the parties by whom said Bonds were issued and received. This principle was laid down in the case of "Gelpeke," 1 Wallace, 206, in which the Supreme Court of the United States held :

"However we may regard the late case in Iowa as affecting the future, it can have no effect upon the past. The sound and true view is that if the contract, when made, was valid by the laws of the State, as then expounded by all departments of the government, and administered in its courts of justice, its validity and obligation cannot be impaired by any subsequent action of the Legislature or decision of its courts altering the construction of the law. The same principle applies where there is a change of judicial decision as to the constitutional power of the Legislature to enact a law. To this rule thus enlarged we adhere. It is the law of the Court. It rests upon the plainest principle of justice. To hold otherwise would be as unfair as to hold that rights acquired under a statute may be lost by its repeal."

See also 5 Wallace, 294 ; 16 How., 432 ; 3 Wall., 327 ; 7 Wall., 181 ; 9 Wall., 477 ; 2 Otto, 633 ; Cooley on Constitutional Limitations, p. 68.

Considering the question as to the basis of taxation fixed by the Act of 1852, it is clear that if the article of the constitution relied on did not apply, the Courts could interfere only upon general principles and for the purpose of protecting the public from spoliation. This case certainly presents no such cause for interference. It was so held in the case of Wallace vs. Shelton, 14 A. 503.

The Court therefore concludes that the objection urged to the constitutionality of the Act of 1852 cannot affect the questions involved in this proceeding.

It remains then to be determined what are the rights of the parties under that Act.

It is claimed that the thirty-seventh section of the Act of 1852 constitutes a contract between the City of New Orleans and the holders of the Bonds issued under and by virtue of that section, which the Legislature had no power to impair, and that the subsequent legislation upon the same subject matter is inoperative for that purpose.

The Court has been referred to a vast number of authorities upon this subject, and has carefully considered those within its reach, including all to which especial importance has been attached.

There can be no question either as to the weight of authority or reason. As was said by the Supreme

Court of the United States in the case of Van Hoffman vs. the City of Quincy, 4 Wall. 554: "It is well settled that a State may disable itself by contract from exercising its taxing powers in particular cases. It is equally clear that where a State has authorized a municipal corporation to contract and to exercise the power of local taxation to the extent necessary to meet its engagements, the power thus given cannot be withdrawn until the contract is satisfied. The State and corporation in such cases are equally bound. The power given becomes a trust which the donor cannot annul, and which the donee is bound to execute: and neither the State nor the corporation can any more impair the obligation of the contract in this way than any other."

It will be observed that this decision was rendered in 1866 by Mr. Justice Swayne, as the organ of the Court: by whom also the case of Gilman vs. the City of Sheboygan (2 Black 510) was decided in 1862.

It is difficult to perceive how the decision last referred to affects the question now before this Court.

The City of Sheboygan had issued bonds under a law authorizing the imposition of a tax on real and personal property alike for their payment. Subsequently, a statute was passed limiting the power of taxation for such purpose to real estate alone. Gilman, the Plaintiff, as an owner of real estate, enjoined the collection of this tax. The decision

was, in effect, that there was no contract between the State and Gilman. The Court expressly said :

" We hear of no complaint from the bondholders. It does not belong to the complainant, vicariously, to enforce their contract and protect their rights."

This language imports a clear recognition of an existing contract between the State and the bondholders, which is all that is contended for in the case at bar. The same thing, in substance, was decided in the case of Layton vs. New Orleans. 12 A. 515.

For further authority on this point the Court has been referred to : Cooley on Constitutional Lim., p. 285 ; Burroughs on Taxation, 427 ; Sedgwick on Constitutional Law, p. 619 ; 1 Dillon on Municipal Corporations, sec. 41 ; 45 N. Y., 234 ; 25 Cal., 638 ; 4 Wheat, 419, and other authorities too numerous to mention.

It is claimed, however, that for the system of taxation provided by the Act of 1852 another system was substituted by subsequent Acts, and that the Act of 1852 is therefore repealed or obsolete.

It is true that from 1856 the tax imposed by the City for the payment of the consolidated debt was assessed upon a different basis from that provided by the Act of 1852, but it is claimed that the collection of the taxes provided for by the laws passed since 1852 is prohibited by Act No. 31 of 1876, that the Relators cannot enforce the provisions of the Act of 1852 because it has been superseded or repealed by those of 1856, providing for general taxation, and

that the Acts providing this general taxation cannot be enforced because they form no part of the Relator's contract. The answer to this proposition is that so long as the debt due to the holders of the Consolidated Bonds was paid according to their contract it made no difference to them in what manner or from what source the money was derived, but when the payment was discontinued, though they may not be in a position to object to the repeal of laws which formed no part of their contract, or to insist upon the collection of a tax in a manner not comtemplated by that contract, there is no good reason why they should not be allowed to enforce the contract and the laws which form part of it.

In the case of Van Hoffman vs. the City of Quincy, already referred to, the Supreme Court said, concerning legislation enacted subsequent to that in existence when the Bonds were issued :

"The laws requiring taxes to the requisite amount to be collected, in force when the Bonds were issued, are still in force for all the purposes of this case. The Act of 1863 is, so far as it affects these Bonds, a nullity. It is the duty of the City to impose and collect the taxes in all respects, as if that act had not been passed. A different result would leave nothing of the contract but an abstract right of no practical value, and render the protection of the constitution a shadow and a delusion."

The same thing may be said of the legislation which, it is claimed, affects the Relators' Bonds and

their rights under the Act of 1852. The very argument that there has been an acquiescence since 1856 in the method then provided for the payment of the Consolidated Debt is as strong for the Relators as for the Respondents, since it is an admission that since 1856 the Relators have been the holders of valid, subsisting obligations, which, after the lapse of twenty-five years, it is claimed are unconstitutional.

If this view be correct, then the Relators are entitled to the enforcement of the provisions of the Act of 1852 as part of their contract.

It is clear that the writ of *mandamus* is the only method by which such enforcement can be attained, and has frequently been recognized as the appropriate remedy in such cases.

Dillon on Municipal Corporations, p. 685, says:

"*Mandamus* is one of the principal remedies by which municipal and public corporations are compelled to perform their duties towards their creditors. The power of the Legislature over these corporations is such that it may require them to levy a tax to pay creditors, and obedience to such requirement may be enforced by *mandamus*."

Cooley on Taxation, p. 524, says:

"One of the most common cases in which the writ of *mandamus* is employed in tax matters, is where it has become the clear duty of the authorities to levy a tax for general purposes or for the payment of some demand, and they refuse to do so."

Burroughs on Taxation, p. 151, says:

"Where there is no plain and adequate remedy for the creditor, the Courts of common law will issue a *mandamus* to the officers of the corporation, who are invested with the power of levying taxes, directing them to levy a sufficient tax to pay the debt of the creditor."

In his treatise on Municipal Bonds, p. 56, Mr. Dillon says:

"The proper mode of enforcing or compelling the performance of the duty of levying and collecting taxes is by *mandamus*, which is an adequate remedy."

The Relators in this case have no other adequate remedy. Unless the corporation respondent can be compelled to collect the interest due on these Bonds by taxation, it does not appear that there is any other way by which the funds can possibly be raised. Any law, therefore, the effect of which would be to deprive Relators of this right, which existed when their Bonds were issued and formed part of the contract created by the Act of 1852, impairs the obligation of that contract, and to that extent is absolutely null and void. This case does not present a question of the power of the Legislature to change the remedy. If Acts Nos. 5 of 1870 and 31 of 1876, so far as they affect the taxing power of the City Council and the authority of the Courts to compel the levy of a tax by *mandamus*, apply to the case at bar, and are constitutional, the Relators have no remedy at all, and their Bonds are merely the representatives of an abstract right, which they have no

means of enforcing. It may well be doubted whether the Act No. 5 of 1870 was intended to apply to cases such as this; but whether it was or not, for the reasons already given, that Act and Act No. 31 of 1876, in so far as they affect the rights acquired by Relators under the Act of 1852, are null.

Relators have prayed for an injunction restraining Defendants from imposing any other tax than that claimed by them to the prejudice of their claims.

The Court is, however, very clearly of opinion that a proper case for the issuance of an injunction has not been presented. If the tax claimed by Relators is levied and collected, they have no interest in preventing the collection of other taxes.

For these reasons, it is ordered, adjudged and decreed that the alternative writ of *mandamus* herein issued be made peremptory, as prayed for, and that the application of the Relators for the writ of injunction be refused. It is further ordered that the interventions of H. W. Montgomery and others, and of the State of Louisiana, in so far as they join the Relators in the prayer for the writ of *mandamus*, be sustained; otherwise that the prayer of said intervenors be refused. It is further ordered that the intervention of John J. Weckerling and others be stricken out, and that the intervention of Thomas H. Hunt be dismissed as in case of non-suit, at the cost of intervenors. It is further ordered that Respondents pay all other costs of this proceeding.

187

RULE FOR NEW TRIAL.

Filed March 30, 1878.

The State of Louisiana on the relation of the Southern Bank, *vs.* Edward Pilsbury, Mayor of New Orleans, et als.	No. 25,072. Third District Court.

On motion of B. F. Jonas and Henry C. Miller, of counsel for Edward Pilsbury, the Mayor of the City of New Orleans, J. C. Denis, Administrator of Finance, and the other Administrators of said city, composing the Council of said city, and the city of New Orleans, the respondents and defendants herein, it is ordered that the Southern Bank, the relator in this case, do show cause on Wednesday morning, the 3d April, 1878, at 11 o'clock, why a new trial should not be granted in this case, on the following grounds:

1st. That the tax known as the Consolidated Loan Tax, sought to be created by the Act of the 23d February, 1852, invoked by the relator, the enforcement of which is directed by the judgment rendered herein, is repugnant to and violative of the articles 127 and 123 of the Constitution of the State of 1845 and 1852, and of article 118 of the Constitution of 1868, for this, to wit, that said tax is sought by said Act to be imposed on real estate and slaves only, and slavery being abolished, said tax, if now imposed, would rest on real estate alone of the portions of the city directed by the Act to be taxed, all other descriptions of property being attemped to be exempted by the terms of said Act.

2d. That said tax is directed to be levied at a different rate per cent. on each of the municipalities of the city, as constituted prior to said Act of 1852, and in the city of Lafayette, added to the city in 1852 as the Fourth District, said rate per cent. of tax being attempted to be adjusted by said Act in proportion to the indebtedness of each of said municipalities and said Fourth District, determined in the arbitrary mode prescribed by said statute, and said mode of adjustment necessarily resulting in a different rate of taxation upon the real estate in each of the municipalities and district.

3d. That said Act proposed to levy said tax not on the basis of value, but upon the basis of indebtedness to be ascertained, so far as the old city debt was concerned, by directing the indebtness between the said municipalities and said district, in proportion to the assessed value of real estate within the limits of each according to the assessment roll of 1851; whereas, under the Articles of the Constitutions of the State, taxation was required to be equal and uniform throughout the State, to be levied upon all property; no one species was to be taxed higher than another species of equal value on which taxes shall be levied, and all property was required to be taxed in proportion to its value, to be ascertained as directed by law, instead of the arbitrary basis attempted to be recognized by the Act of 1852. 2d. That the articles of the Constitution cited apply to govern and regulate municipal taxation, as well as to taxation by the State. 3d. That as early as 1856 the Legislative authority recognized the Constitutional and other objections to the system of taxations attempted to be created by the Act of 1852, and directed that thereafter it should not be lawful for the city of New Orleans to levy any tax whatever, whether on real estate or slaves, or movables, which shall not be equal and uniform within the limits of, or through the several districts of said city as now required. That this Legislation, as is expressed in the preamble to the act No. 93, of 1856, was perfected to make taxation conform to justice and the principles of the Constitution; that this legislation was upheld by the Supreme Court in 1857, has been acquiesced in by all, and acted upon ever since, and taxation by the city has been in accordance with the rate of

equality and uniformity prescribed by the legislation of 1856, and similar legislation repeated in the succeeding charters of the city, and there is now no warrant in law to resort to and make operative the system of taxation aimed at by the Act of 1852, obnoxious to the Constitution, as it was excluded from the statute book by express legislation, in 1856, and never attempted to be put in operation since, until demanded by the relator, and then holding the same class of bonds in their suit against the city.

4th. That the Court erred in holding that the tax of 1852 was sanctioned by the jurisprudence of that period.

5th. That the said Act of 1852, in so far as it seems to improve said act is violative of, and repugnant to the Articles 115 and 118, of the constitutions of 1845 and 1852.

6th. That the law prohibits any mandamus against the city to compel the imposition of said tax.

7th. That the relator has no contract which entitles it to said tax, and the taxing power belongs to the legislative department.

8th. That the judgment is contrary to law and evidence.

RULE FOR NEW TRIAL.

Filed April 1st, 1878.

State ex rel. Southern Bank *vs.* E. Pilsbury, et als.	No. 25,072 Third District Court.

On motion of Kennard, Howe & Prentiss, attorneys for John J. Weckerling, Jesse K. Bell, Simon Hernsheim, Emile F. Delbondio and Henry Delbondio, intervenors, and suggesting that there is error in the judgment rendered herein on the 26th March, 1878, to the prejudice of movers, ordered that the relator show cause on the 3d April, 1878, at 11 A. M., why a new trial should not be granted herein.

First. Because the Court erred in holding that intervenors had no legal interest to come in and to oppose the demand of relator.

Second. For the reasons set forth in the motion of the defendants, which are hereby adopted.

Third. Because the judgment is erroneous, in that it orders the levy of a tax on real estate in the Fourth, Fifth, Sixth and Seventh Districts of New Orleans.

FINAL JUDGMENT.

Rendered March 26th, and signed April 3d, 1878.

For the reasons assigned in the written opinion of the Court, this day delivered and filed,

It is ordered, adjudged and decreed, that the alternative writ of mandamus herein issued be made peremptory, as prayed for, and that the application of the relators for the writ of injunction be refused. is further ordered that the interventions of H. W. Montgomery and others, and of the State of Louisiana, in so far as they join the relators in the prayer for the writ of mandamus, be sustained, and otherwise that the prayer of said intervenors be refused.

It is further ordered that the intervention of John J. Weckerling and others be stricken out, and that the intervention of Thos. H. Hunt be dismissed, as in the case of non-suit, at the cost of intervenors. It is further ordered that respondents pay all other costs of the proceeding.

Judgment rendered March 26th, 1878; signed April 3d, 1878.

(Signed) F. A. MONROE, *Judge*..

ORDER REFUSING NEW TRIAL.

Rendered April 3d, 1878.

The rules for a new trial, herein taken by respondents and John W. Weckerling and others, intervenors, came up for hearing to-day.

Present: E. Bermudez for relator; H. C. Miller for respondents; W. W. Howe for intervenors.

When counsel having submitted the rules without argument, for the reasons orally assigned, it is ordered by the Court that said rules be dismissed.

162

MOTION FOR APPEAL FOR INTERVENORS.

Filed April 10th, 1878.

State, ex rel. Southern Bank *vs.* Pilsbury, Mayor, et als.	No. 25,072 Third District Court.

On motion, in open Court, of Kennard, Howe & Prentiss, of counsel for intervenors herein, John J. Weckerling, Simon Hernsheim, Jesse K. Bell, Emile F. Delbondio and Henry Delbondio, as agent and on behalf of estate of F. Delbondio, and on suggesting that there is error to the prejudice of said intervenors in the final judgment herein rendered on the 26th day of March, 1878, and signed on the 3d day of April, 1878, dismissing their interventions, and that they are aggrieved thereby,

Ordered by the Court, that said intervenors be allowed an appeal from said judgment, on furnishing bond and security according to law, in the sum of two hundred and fifty dollars, returnable to the Supreme Court on the first Monday of May 1878, there not being time to complete the transcript before that time, and that in case defendants appeal, the same transcript shall be used for intervenors, as is made for defendants

---

MOTION OF APPEAL.

Filed April 12, 1878.

The State of Louisiana, ex rel. The Southern Bank *vs* Edward Pilsbury, the Mayor of the City of New Orleans, J. C. Denis, Administrator of Finance, et als.	No. 25,072 Third District Court.

On motion of B. F. Jonas, attorney of the City of New Orleans, and of Henry C. Miller, of counsel for the City of New Orleans, and on suggesting that the said City of New Orleans is aggrieved by the final judgment in this cause, rendered on the 26th March, 1878, and signed on the 3d April, 1878, making peremptory the writ of mandamus demanded by the relator, that the said City of New Orleans has an interest in the subject matter of controversy herein, and its rights are seriously

affected and impaired by the said judgment; that the said city is advised that said judgment is erroneous, to the prejudice of said city, and said city desires and claims to be allowed an appeal from said judgment, and on filing as part hereof, an affidavit of the subject matter in dispute herein and of its amount and value.

It is now ordered that the said City of New Orleans be allowed a suspensive appeal from said judgment, returnable to the Supreme Court of the State on the first Monday in May, 1878, said city being dispensed by law from giving bond for an appeal.

MOTION OF APPEAL.

Filed April 12, 1878.

Third District Court, Parish of Orleans.

State, *ex rel.*, Southern Bank,
vs.
E. Pilsbury, Mayor, et al. } No. 25072.

On motion of B. F. Jonas and Henry C. Miller, of counsel for Edward Pilsbury, the Mayor of the city of Orleans; Jules C. Denis, Administrator of Finance; J. G. Brown, Administrator of Accounts; John McCaffrey, Administrator of Improvements; R. E. Diamond, Administrator of Police; J. E. Rengstorff, Administrator of Assessments; J. D. Edwards, Administrator of Water Works, and Charles Cavanac, Administrator of Commerce, forming the Council of said city of New Orleans, the defendants and respondents herein, and on suggesting that they are aggreived by the final judgment in this cause rendered on the 26th March, 1878, and signed on the 3d April, 1878, making peremptory the writ of mandamus demanded by the Southern Bank, the relator herein, in its petition for said writ; that the said defendants and respondents are advised that said final judgment is erroneous to their prejudice, and they desire and claim to be allowed an appeal

from said judgment, and on filing as part thereof the annexed affidavit of the matters in dispute herein, and of the amount and value thereof—

It is ordered, that the said Edward Pilsbury, the Mayor of said city of New Orleans; Jules C. Denis, Administrator of Finance; J. G. Brown, Administrator of Accounts; John McCaffrey, Administrator of Improvements; J. D. Edwards, Administrator of Water Works; Charles Cavanac, Administrator of Commerce; R. E. Diamond, Administrator of Police; J. E. Rengstorff, Administrator of Assessments, the defendants and respondents herein, forming the Council of said city of New Orleans, be allowed a suspensive appeal from said judgment, returnable to the Supreme Court of this State on the first Monday of May, 1878, upon the said defendants and respondents giving bond with good and sufficient security in the sum of twenty-five hundred dollars, conditioned as the law directs.

MOTION FOR APPEAL.

Filed April 23d, 1878.

State of Louisiana ex rel. the Southern Bank vs. Ed. Pilsbury et al.	Third District Court, Parish of Orleans.

On motion of Jno. & W. S. Finney, attorneys for Thos. H. Hunt, intervenor, it is ordered by the Court that said intervenor have and be allowed an appeal from the judgment herein rendered on the 26th day of March, 1878, and signed on the 3d day of April, 1878, upon giving bond in the sum of fifty dollars to the clerk of this Court, with good and solvent security, and conditioned as the law requires, said appeal to be returnable to the Supreme Court on the first Monday of May, 1878.

NOTE.—Copy of Bonds af appeal, dispensed with by consent of parties.

FILING OF TRANSCRIPT.

Transcript of Appeal from Third District Court filed in the Supreme Court of Louisiana on May 4th, 1878.

ANSWER TO APPEAL.

Filed November 16, 1878.

State of Louisiana ex rel Southern Bank vs. E. Pilsbury, Mayor et als.	Supreme Court of Louisiana, No 7157.

For answer to the appeal herein taken, the relator respectsully says:

That in so far as the judgment appealed from orders a peremptory mandamus to issue, the same is correct and should be affirmed; but that in so far as it refuses to issue the injunction sought, the same is incorrect and should be reversed and reformed so as to grant said injunction.

Wherefore, relator prays that the said judgment be affirmed and reformed accordingly, and for general relief, etc.

JOHN A. CAMPBELL,

E. BERMUDEZ,

Of Counsel for Relator.

Extract from Minutes of Supreme Court.

This case was fixed and came up for argument before the said court on the 19th, 20th, 21st, 22d and 23d of November, 1878.

Extracts from Minutes of 23d November, 1878.

Supreme Court of the State of Louisiana,
Saturday, November 23d, 1878.

The Court was duly opened. Present, their Honors Thomas

C. Manning, Chief Justice, and Robt. H. Marr, Alcibiade DeBlanc, William B. Spencer, Associate Justices. Absent: William B. Egan, Associate Justice.

State ex rel., Southern Bank,
vs.
E. Pilsbury, Mayor, and others. } No. 7157.

This case was called for resumption of trial, and having heard argument from John A. Campbell, Esq., of counsel for plaintiff and appellee, the Court took the same under advisement upon the briefs for parties in interest and the papers now on file.

Extract from Minutes of December 30, 1878.

The Court was duly opened, pursuant to adjournment, on this the 30th day of December, 1878.

Present, their Honors T. C. Manning, Chief Justice, and R. H. Marr, A. DeBlanc, W. B. Spencer, Associate Justices.

His Honor Justice Marr pronounced the Judgment and Decree of the Court in the following case:

State, *ex rel.*, Southern Bank,
vs.
Pilsbury, Mayor, and others. } No. 7157.

(On appeal from the Third District Court for the parish of Orleans.)

It is ordered, adjudged and decreed that the judgment appealed from be annulled, avoided and reversed; and that the demand of the relator be rejected and dismissed, with costs in both courts.

Mr. Justice DeBlanc concurs in the opinion and decree read by Mr. Justice Marr, for the reasons assigned in his concurring opinion.

For the reasons stated in his opinion, His Honor the Chief Justice *dissents* in this case.

SUPREME COURT OF LOUISIANA.

No. 7157.

STATE OF LOUISIANA ex Rel.
SOUTHERN BANK

vs.

E. PILSBURY, Mayor, et als.,
Appellants.

Appeal from the Third District Court, Parish of Orleans.

The following opinion was delivered by his Honor R. H. MARR, Associate Justice, on the 30th December, 1878.

The city of New Orleans was incorporated by act of the Territorial Legislature, approved February 17, 1805, with the powers usually conferred on municipal corporations, including that of raising money for municipal purposes "by tax upon real and personal estate within the city." P. 44.

Under this charter, and such amendments as the Legislature saw fit to make from time to time, the municipal government was administered until 1836, when, by act approved March 8, the city was

divided into three municipalities, each having a separate government for local purposes, with all the powers within their respective limits which have been vested in the undivided city, except that there was one Mayor for the whole city and a general council to decide upon matters of general interest. P. 28.

This act required the then existing debt of the city to be paid by the three municipalities, the quota of each to be apportioned on the basis of the amount of taxes and resources accruing to each ; it created a sinking fund for the purpose of paying this debt and interest, section 15 ; and provided that in case of reunion "the debt of each municipality shall be paid by the inhabitants thereof," section 26.

A supplementary act, approved March 11, 1836, declared more specifically that if the law establishing the three municipalities should, by any future Legislature, be repealed or so amended as to unite them into one corporation, "all the debts created by each of the said municipalities shall first be fully paid and satisfied by each municipality respectively." Sec. 3, p. 38.

The contingency thus provided for was realized in 1852 ; the three municipalities were re-united by act approved February 23, p. 42. The Second Municipality became the First District ; the First Municipality, the Second District ; the Third Municipality, the Third District, and by act approved the same day, p. 55, the city of Lafayette was annexed to and incorporated with the city of New Orleans as the Fourth District.

By subsequent legislation, all that part of the parish of Orleans situated on the right bank of the Mississippi was annexed as the Fifth District, Jefferson City as the Sixth, 1870, p. 30; and the city of Carrollton as the Seventh District of New Orleans, 1874, p. 119. In each case the city of New Orleans became liable for and assumed the debts of the corporations annexed, as it had done with respect to the three municipalities and Lafayette.

During the sixteen years of separation the three municipalities contracted debts far beyond their resources, and they became greatly embarrassed and finally insolvent. The Legislature, from time to time, adopted measures for their relief; 1839, p. 94; 1847, p. 140; 1850, p. 169; and an act was passed, in 1850, for the government and administration of the affairs of the city of New Orleans "in case the three municipalities should be re-united," p. 156.

Nothing was accomplished under this act, and obvious as the necessity was for a re-union, there were serious difficulties in devising a satisfactory plan and in adjusting and carrying out the requisite details. The "inhabitants" were not able to pay the debts of each municipality respectively, as required by section 26 of the act of 1836, and the "municipalities" were not able to comply with the condition precedent imposed by section 3 of the supplementary act, which required that all the debts *created* by said municipality should *first* be fully paid and fully satisfied by each. The debts of the several municipalities were unequal in amount, and not proportionate either to the population or to the respec-

tive values of the taxable property in each, and the constitution of 1845 required that taxation should be equal and uniform throughout the State.

The Legislature of 1852 grappled with these difficulties. By the two acts of twenty-third February, No. 71, section 37, No. 72, section 5, the entire indebtedness of the municipalities and of Lafayette, including the quota of the old city debt apportioned to each municipality in accordance with section 15 of the act of eighth March, 1836, and the separate debt subsequently created by each, was consolidated and assumed by the city of New Orleans, and bonds of the city were issued for the aggregate amount, having not more than forty years to run. The old city debt was divided between the three municipalities in proportion to the value of the real estate within the limits of each, as fixed by the State assessment roll of 1851 ; and this quota, added to the separate debt created by each municipality, constituted the entire debt of each.

To meet the annual interest, and to provide a sinking fund for the purchase and final payment of these bonds, an annual special tax of $650,000 was to be levied on the real estate and slaves in the three municipalities and Lafayette, the rate per cent. in each to be in proportion to the indebtedness of each. The act also required the Common Council, in the month of January of each year, to pass an ordinance to raise this sum, to be called the consolidated loan tax ; and it declared null and void all ordinances, resolutions or other acts passed by the Council after the first of January in each year, " unless the ordi-

nance imposing the consolidated loan tax shall have been previously passed." The city of New Orleans was forbidden to issue any obligation or evidence of debt except the consolidated bonds; or to contract any loan, unless the same be authorized by a vote of the majority of the qualified voters of the city; and it was also declared that no ordinance creating a debt or loan should be valid unless for a single object or work distinctly specified therein, and unless such ordinance should provide ways and means for the punctual payment of the current interest during the whole time for which such debt or loan should be contracted, and for the full and punctual discharge, at maturity, of the capital borrowed or debt incurred; and such ordinance was made irrepealable until the capital borrowed or debt contracted, and the interest, should be fully paid and discharged.

It would be difficult to find municipal obligations better secured than these consolidated bonds apparently were. They were recognized as valid by the Legislature in numerous acts, from 1852 to 1874, and they enjoyed high credit in the markets of Europe and America. Under the free banking law of 1855 they were received by the State as security for the redemption of the circulation of the banks, and trust funds to a large amount were invested in them. The interest was paid punctually, and some five millions of the bonds have been paid, or purchased and retired, leaving some four millions outstanding.

The Legislature, on the twelfth of March, 1852, passed an act, No. 175, authorizing parishes and

municipal corporations to subscribe to the stock of corporations undertaking works of public improvement to be paid by a tax on landed estate. This act did not authorize the issue of bonds in payment of the stock ; and it provided that the stock should belong to the tax payers in proportion to the amount of the tax paid by each.

Stringent as the prohibitions of the consolidation act were, the City Council, in May, 1852, by two ordinances, subject to ratification by the qualified voters, took stock in the New Orleans, Jackson and Great Northern Railroad to the extent of $2,500,000, and in the New Orleans, Opelousas and Great Western Railroad to the extent of $1,500,000, payable in the bonds of the city, the interest to be met by a special tax on real estate and slaves. The Legislature, in 1854, by acts 108 and 109, required the Council to repeal these ordinances, no doubt because they were considered to be unlawful assumptions of power ; but by the same acts it authorized the subscriptions, bonds and special tax in accordance with the ordinances, requiring the city to collect and pay the railroad tax for 1853 ; and by act No. 110, of the same year, the city was authorized to take stock in the Pontchartrain Railroad to the extent of $1,500,000, with the view of extension to Mobile, payable in bonds, the interest to be secured by tax on all the taxable property of the city. These three acts required ratification by the qualified voters.

By subsequent acts the city was authorized to issue bonds without the formality of popular ratification, so that the entire bonded and floating debt,

which aggregated, on the thirty-first of December, 1852, $8,736,238, amounted, on the thirty-first of December, 1874, to $24,741,765.

The owners of real estate and slaves found this tax oppressive, and after submitting to it for four years—1852 to 1855 inclusive—they memorialized the Legislature for relief. In 1856 the Legislature passed three acts for that purpose, Nos. 93, 134 and 164. The first of these limited city taxation on movables or personal property and real estate and slaves to $1 50 on the hundred, provided that rate on real estate and slaves should suffice to raise the amount required to pay the interest on the city debt, together with the gradual reduction of the capital of the consolidated debt. This act prohibited the levy by the City Council of any tax, whether on movables or on real estate and slaves, which should not be equal and uniform, within the limits of or through the several districts of the city. Act No. 134 subjected to city taxation every species of property, real and personal, with certain specified exceptions; and act No. 164 amended the consolidation act and enlarged the city charter, embodying substantially the provisions of acts Nos. 93 and 134. Section 42 of this act required the Common Council to levy, annually, an equal and uniform tax on all property, real and personal, but this taxation was limited to $1 50 on the hundred, including the consolidated loan tax and the special railroad tax, provided that rate should be sufficient to pay the interest on the consolidated debt and the railroad bonds issued by the city.

Since the passage of these acts taxation in New Orleans has been at a fixed rate per cent on all taxable property, according to valuation, but the rate has been changed by the Legislature as the exigencies of the city required. Out of the sum thus raised the amount required for the consolidated loan tax was set apart annually and applied to the consolidated debt.

By act No 5, extra session of 1870, the Legislature forbade the process of mandamus against any auditing or disbursing officer of the city to compel the issuing of any warrant for or to enforce the payment of any money claimed to be due by the city. This act required all actions for money claimed of the city to be instituted in the ordinary form against the city as a corporation. It prohibited the issuing of any execution or *fieri facias* to enforce any judgment against the city; it provided for the registry of such judgments by the auditing officer, and made them payable in the order of their registry, either out of money in the treasury or out of the next annual budget.

In 1874, by act No. 53, the Legislature postponed until December, 1876, the levy and collection of any tax by the city of New Orleans for a sinking fund for the purchase of its bonds, but it expressly provided that "this act shall in no wise be construed to hinder, delay or affect the payment of the interest on the bonds of said city as the same shall mature; and *provided further*, that the validity of the consolidated bonds of the city of New Orleans is hereby recognized in all its integrity, it being the object of

this act to afford temporary relief to the tax payers of the city of New Orleans in the embarrassed condition of affairs, and not to detract from or impair the rights of the holders of said bonds or others." Page 92.

In 1876 an act was passed—No. 31, commonly known as the premium bond act—authorizing the city of New Orleans to fund its entire bonded debt. Section 7 of this act prohibited the levy of any city tax, either for 1876 or for any year thereafter, for the payment of other bonds or interest on other than the premium bonds. All laws authorizing the City Council to levy any tax whatsoever for other bonds, or interest on other bonds, were repealed, and the Courts of the State were declared incompetent to compel the officers of the city, by mandamus, to levy and collect any interest tax other than that provided for in the act.

The Southern Bank, holder of 613 of the consolidated bonds, formally demanded of the city, in December, 1876, and in December, 1877, compliance with the requirements of the consolidation act. The city having thus been put in default, this suit was brought against the Mayor and Administrators to compel them, by mandamus, to levy and collect a special tax, by separate and distinct assessment, of $650,000 on the real estate subject to that tax for each of the years 1874 to 1878 inclusive, less coupons paid in 1874 and 1875, and by injunction to prevent the levy by the Mayor and Administrators of any tax on the real estate within the city limits subject to taxation in favor of the consolidated loan debt

under the act of 1852 without first having provided for that debt. The petition states at length and minutely the history of the consolidated debt and bonds, which we have endeavored to condense and to connect with the legislation by which they may be affected, and it charges that "the city and the taxable real estate within its limits are liable for the payment of the matured coupons and for the purchase of the bonds to the extent of $650,000 per annum for the years 1874 to 1878 inclusive, less coupons paid in 1874 and 1875, the amount of which relator knows not."

The petition also charges that the city is estopped from denying the validity of the bonds and coupons and the obligation to levy the special tax under the provisions of section 37 of act 71 of 1852, by reason of the judgment of the Circuit Court of the United States in the case of Rosalie Maenhaut vs. the city of New Orleans, "wherein the city denied liability for the debt, and wherein the Circuit Court declared said section 37 to be a *contract*, binding on the city, the State and the bondholders, and has ordered and compelled a distribution of taxes realized, and has reserved all the rights of complainants to a mandamus to compel the levy and collection and application of said special tax, at a future time, to its legitimate objects."

The Mayor and Administrators excepted to the jurisdiction of the Court, setting up and relying upon the acts of 1870 and 1876, already referred to.

They also excepted that no ministerial duty is imposed on them to levy or collect the tax sought to

be enforced by mandamus; on the contrary, they are forbidden by the act of 1876 to levy said tax for 1876 or any year thereafter; and that the act of 1874 suspended the levy of any tax for sinking fund under act No. 71 of 1852 until December, 1876, and that a tax was levied and collected to pay the interest on the consolidated bonds until 1876, when it was forbidden by act No. 31 of that year.

In their answer respondents repeat substantially the defenses set up by way of exception. They also plead that section 37 of the act of 1852 is unconstitutional and void, because the objects of that section are not expressed in the title as required by the constitution of 1845, article 118, which was in force at the date of the passage of that act.

They plead that the tax provided for in section 37 of the act of 1852 is violative of article 127 of the constitution of 1845, and article 123 of the constitution of 1852, because it is to be assessed on real property and slaves alone, and because the rate per cent of the tax in each municipality is to be in proportion to the indebtedness of each, and that all the subsequent acts referred to by relator as recognitions of the bonds and tax specified in section 37 of the act of 1852 are, upon the same grounds, wholly unconstitutional and void.

Weckerling and others, owners of real estate in the First, Fourth and Sixth Districts, intervened, alleging that their property was not liable to the special tax imposed by the act of 1852, and that that act is violative of articles 118, 127 of the constitution of 1845, and 115, 123 of the constitutiou of 1852.

They joined respondents in opposing relator, and they alleged that an injunction will not lie on a petition in the form adapted to mandamus.

Thomas H. Hunt, the owner of premium bonds of the city, intervened, and set up the defense plead by respondents. He opposed the injunction prayed for on the ground that, if granted, it would arrest the Mayor and Administrators in the performance of their proper legislative and executive functions, overthrow the city government and result in anarchy.

He set out at some length the constitutional objections to the act of 1852, based upon the alleged defect in the title, and the want of equality and uniformity in the tax; and he specially objected to so much of section 37 of the act as restricts the legislative functions of future legislatures and the exercise of such legislative powers as may be conferred from time to time by the Legislature upon the Mayor and Council as null and void, being beyond the power of the Legislature of 1852, or any other year.

Montgomery and others, tax payers, intervened, admitting the validity of the bonds and joining relator in his prayer for mandamus, so far as it relates to the tax for 1878 and future years; but they opposed and protested against it for previous years on the ground that the imposition of taxes for such an amount would be ruinous and would lead to bankruptcy.

Finally the State of Louisiana intervened, claiming to be the owner of 213 of the consolidated bonds and joining relator in his demand.

Respondents filed a supplemental answer, setting out more specifically the constitutional objections to the act of 1852 ; pointing out alleged defects in the title, and exposing the inequality and want of uniformity in the special tax on real estate and slaves alone.

Relator objected to the filing of the interventions in opposition to its demand, on the grounds that interventions are not allowed in mandamus proceedings of the character of the present one ; and that no party can be allowed to intervene unless he shows a direct personal interest which would be irreparably injured by the judgment apprehended, and unless such party could bring a direct action for the purpose of recovering the object of his intervention.

The form of action cannot control the right to intervene. Whenever there is suit, a plaintiff on the one side, demanding, and a defendant on the other side, resisting, a third person may, by timely application to the Court, on proper showing, be made a party. C. P. 389.

"In order to be entitled to intervene it is enough to have an interest in the success of either of the parties, or an interest opposed to both." C. P. 390.

The tax payers, intervenors in this case, are very much interested in the success of respondents, and in opposing the demand of relator to have a large sum levied and collected as a tax on their property, as well as on that of others. The holder of the premium bonds is very much interested in opposing the mandamus and injunction, which would interfere

with, perhaps prevent, the levying of any tax to pay the accruing interest on his bonds.

There is no analogy between this case and that of Roudanez and others, 29 An. 271. In that case the Legislature having authorized the Mayor and Administrators of New Orleans to hold an election for the purpose of taking the sense of the people as to the levy of a tax in aid of the Pacific Railroad, Roudanez and others sought, by injunction, to prevent the holding of the election. We held that this could not be done; that the Legislature had the right to submit such a question to the people whenever it saw proper to do so; that the tax had not yet been authorized; and that plaintiffs had no interest and no right to prevent the holding of the election, the result of which might or might not be the consent of the people to the tax.

In this case the direct object is to have a tax levied and collected at once. We think the tax payers had the right to intervene and to be heard.

Relator also objected to the filing of the supplemental answer on the grounds that, if the first answer be true, the second could only be a reiteration of the first, and would, therefore, be irrelevant; or, if the second answer was different from the first, it would change the issue, and, therefore, would be inadmissible.

The supplemental answer does not conflict with the original answer. It is an amplification of the original; it did not retard the trial; and it required no other or different proof than that which was

required under the original. We think it was properly received.

The district court made the mandamus peremptory, but refused the injunction; sustained the intervention of Montgomery and others and of the State of Louisiana, in so far as they joined in the prayer of relator for mandamus and injunction, and refused their prayer in other respects; and ordered the intervention of Weckerling and others to be stricken out, and that of Hunt to be dismissed as in case of non-suit.

From this judgment Weckerling and others, the Mayor and Administrators and Hunt, appealed separately. Relator, in answer to the appeal, asks that the judgment be so amended as to grant the injunction, as prayed for, and be affirmed in other respects.

The issues thus presented to us for solution are of the utmost gravity, and they have been argued with great ability by the distinguished counsel representing the several parties. A review of all the authorities cited by them is not possible within the compass of a judicial decision, nor can we attempt a synopsis of the points presented and argued in a discussion which occupied five days.

Many of the matters discussed are of great public interest, but some of them we have no power to pass upon judicially on this appeal. No bonds are before us except the consolidated bonds. True, the holder of premium bonds intervened, but he does not seek to enforce his bonds, nor does he ask for any judicial recognition of them. He states that he is the holder of these bonds merely as inducement

for the purpose of showing his interest and his right to intervene. The only decree which we have jurisdiction to render, under the pleadings, is such as may be proper in our judgment, either affirming or reversing the judgment appealed from. We shall endeavor, therefore, to limit our inquiry to the points and questions tending to the determination of the matters passed upon by the District Court—the right of the relator to the relief sought by mandamus and injunction.

Before proceeding further we think it proper to say that, in our opinion, the judgment of the Circuit Court of the United States, in Maenhaut and others vs. the city of New Orleans, is not *res adjudicata*, and that it does not operate as an estoppel against the Mayor and Administrators on any of the questions involved in this case. Money was collected by the city authorities for taxes, out of which a certain amount had been set apart and deposited with the Fiscal Agent to be applied to the consolidated debt.

The Mayor and Administrators undertook, in July, 1875, out of the whole of the taxes so collected, to pay 50 per cent on account of the interest due on the entire bonded debt of the city, if the holders of the matured coupons would accept the arrangement. Maenhaut and others, holders of consolidated bonds, brought suit to prevent, by injunction, the proposed distribution of the tax money, and they also demanded the specific enforcement of the act of 1852.

The Court decided that complainants were entitled to distribution rateably "of the money actually on deposit to the credit of the consolidated coupons

overdue and held by them." To that extent the preliminary injunction was maintained; and in all other respects the bill was dismissed, "reserving the right of the complainants to urge at law the claims by them herein set up."

Obviously, when the tax payers had paid the money, and the city authorities had set apart and deposited a certain amount to the credit of outstanding matured obligations, it was no longer in the power of the Mayor and Administrators to change its destination, or to apply the money "actually on deposit to the credit of the consolidated coupons" to any other purpose.

We may add that in a later case, Vignier vs. the Mayor and Administrators, in the Circuit Court of the United States, the District Judge sitting, the judgment in Maenhaut's case was held not to conclude the city, and the mandamus prayed for by the holder of consolidated bonds to compel the levy and collection of the special tax was refused.

From the history which we have given of the consolidated bonds it is manifest that they were issued for a good and meritorious consideration. They represented what remained unpaid of the old city debt, contracted prior to the separation in 1836, and the debts of the several municipalities, contracted during the separation. The consolidation of the city of New Orleans made it necessary for the city to assume these debts, because, by the consolidation, the city took and became the owner and administrator of all the means and resources of the municipalities for paying debts, and the municipalities

ceased to exist as separate bodies. Assuming these debts, it was necessary for the city to put them in a shape that would be acceptable to the creditors, and would give the city, the new debtor, time to provide the means of paying them. Bonds, payable at a distant day, bearing interest, constituted the only form of obligation that would meet the emergency, and they are the most usual and convenient form of municipal obligations.

The validity of these bonds is questioned on the single ground that section 37 of the act of 1852, under which they were issued, is violative of article 118 of the constitution of 1845, which declared that "every law enacted by the Legislature shall embrace but one object, and that shall be expressed in the title." The title is "An act to consolidate the city of New Orleans, and provide for the government and administration of its affairs."

The single object of the act was to consolidate the city of New Orleans, to bring back its dissevered members, and to put an end to their separate existence by uniting them under one government. The consolidation required some provision for the government and administration of the affairs of the new corporation thus created, and all the details and particulars in the body of the act germane to the one object, the single purpose contemplated by the legislature, without which that purpose could not have been accomplished, are sufficiently indicated and expressed in the title. The immediate cause of the consolidation was the utter inability of the municipalities to pay the debts for which they were separately

bound, and to substitute the city in all things pertaining to municipal government for the municipalities. The issuing of these bonds was an act of administration of the affairs of the city, devolved upon it by the consolidation and necessarily pertaining to the government of the city.

The act of 1852 was a waiver of the condition precedent established by section 3 of the supplementary act of 1836, and a repeal of that section. But the framer of section 37 was evidently controlled by the idea that the requirement of section 26 of the act of March 8, 1836, must be enforced, and the debts of each municipality must be paid by the inhabitants thereof. The original partition of the old city debt under section 15 of the act of 1836, on the basis of the amount of taxes and other revenues accruing to each municipality, was apparently equitable, and we are not informed of the motives for the departure from that apportionment and the new apportionment in section 37 on the basis of the value of real estate within the limits of each municipality, as fixed by the State assessment roll of 1851.

Having thus fixed the quota of each municipality, by an invariable and arbitrary standard, and established the portion of the aggregated debt to be paid by each, by adding to this quota the debt created by each, section 37 required the inhabitants of each municipality to pay their respective portions of the consolidated debt by an annual tax on the real estate and slaves owned by them, without respect to their value, the percentage in each municipality

being in proportion to the amount of indebtedness of each.

We have no means of ascertaining the relative values of real estate and slaves, or of other taxable property in the several municipalities in 1851, nor subsequently. In the nature of things the tax imposed by the act of 1852 could not have been equal and uniform. During the forty years of the running of the consolidated bonds, many of the slaves would die, and any and all of them might have been removed beyond the limits of the city at any time, so that they would not have been within the reach of the city taxation; and great changes would necessarily take place in the actual and relative values of real estate in different parts of the city, while the portion of the debt to be paid, by the inhabitants of each subdivision, was irrevocably fixed. The assessment rolls, from 1870 to 1877 inclusive, were offered in evidence, and they show how unequally and oppressively the tax, as fixed by section 37, would operate now. The real estate in the First District, in 1870, was valued at $50,986,125, personal property at $16,148,140; in 1877, real estate $36,611,165, personal property at $17,187,620. In the Second District, in 1870, real estate $29,870,975, personal property $5,118,102; in 1877, real estate $21,578,925, personal property $2,792,295.

In the Third District in 1870, real estate $10,693,723; personal property, $809,005. In 1877, real estate, $9,497,765; personal property, $639,282.

In the Fourth District in 1870, real estate, $14,-

683,995 ; personal property, $909,416. In 1877, real estate, $12,374,530 ; personal property $800,-820.

The practical operation of this mode of taxation, shows how great the disparity was during the four years, from 1852 to 1855 inclusive, after which it was abandoned. The aggregate of the percentages levied on real estate and slaves, for these four years, for all purposes was : In the First District 8.58⅓, in the Second 8.09⅓, in the Third 10.71⅓, and in the Fourth 7.65⅓ ; while all other taxable property in the city, paid only 2.95 for all purposes in these four years.

The constitution of 1845, article 127, which corresponds with article 123 of the constitution of 1852, and article 118 of the existing constitution, is as follows : "Taxation shall be equal and uniform throughout the State.. After the year 1848, all property on which taxes may be levied in this State shall be taxed in proportion to its value, to be ascertained as directed by law. No one species of property shall be taxed higher than another species of property of equal value on which taxes shall be assessed."

It would be a waste of words to attempt to show the manifest inequality and want of uniformity in the tax imposed by section 37 of the act of 1852. It was flagrantly in conflict with the constitution of 1845. Counsel for relator urge that article 127 of the constitution of 1845 was applicable only to taxation by the State, and not to municipal taxation ; and they rely on Second Municipality vs. Duncan,

2 An. 182 ; Cummings vs. Lafayette, 3 An. 674, and Buffington vs. Dinkgrave, 4 An. 548.

In Duncan's case the Second Municipality, on the twenty-ninth of August, 1846, levied a tax of 1 per cent on all the real estate within its limits. Duncan opposed this tax as being unequal. The only proof seems to have been the admission that there was no special ordinance of the municipality assessing taxes on personal property. Under the constitution of 1812, it was held that the Legislature had power to select the objects of taxation, and that to be equal and uniform the tax must be the same on the objects so selected.

Under the charter of 1805, the city of New Orleans had the power to tax real and personal estate, and this power belonged to the municipalities during their separation under the act of 1836. Jurisprudence had settled that it was not necessary for the city or the municipalities to exercise all the power thus conferred by taxing all property, real and personal, and the tax in this case was equal and uniform on all the property selected, real estate.

The equality and uniformity thus understood had been observed in the tax in question, and it will be borne in mind that the part of article 127 of the constitution of 1845, which forbids the taxing of one species of property higher than another species of property of equal value, was expressly postponed in its effect until after 1848. Chief Justice Eustis, who was the organ of the court, did say that this article of the constitution, by its very terms, applies to State and not to municipal taxes.

"It provides for the equality and uniformity of taxation *throughout the State.*" 2 An. 183.

But there was no occasion to say any such thing, for the reason that the tax in question was lawful under the constitution of 1852 and the city charter of 1805, and that part of the constitution of 1845 which might have made it unlawful did not take effect until a year after this decision was rendered, nearly two years after the tax was levied.

In Lafayette vs. Cummings, the suit was for license tax on defendant's occupation. Judge Eustis, who was again the organ of the court, referring to Duncan's case (2 Annual), said that after thorough argument, article 127 was held to be applicable to State and not to municipal taxes. Surely there was no occasion for this dictum. The tax was levied on the occupation, under authority of an act of the Legislature, and every person pursuing that occupation was subject to the same tax. There is no other mode of levying such a tax, and it was equal and uniform — strictly within the letter and spirit of article 127.

In Buffington vs. Dinkgrave, the tax in question was a city license on the occupation. The inequality of the tax was urged, mainly on the ground that a part of the year had already expired when the plaintiff became subject to the tax. It did not appear that the tax was other than that imposed on all persons pursuing the same occupation, and no law required the city to fractionize the license tax.

The court disposed of the objection by a simple reference to the cases of Duncan and Cummings.

But, as the tax was equal and uniform, in that it was imposed alike on all persons pursuing the same occupation, it was not in conflict but in strict accordance with article 127. We cannot assent to the proposition that article 127 of the constitution of 1845, and article 123 of the constitution of 1852 were not applicable to municipal taxation.

The decision in Duncan's case was rendered on the fifteenth of February, 1847. The Legislature was then in session, and it hastened to place the taxpayers of New Orleans under the ægis of this constitutional provision. By act approved May 4, 1847, No. 192, page 140, it was declared that taxation within each municipality shall be equal and uniform. After the year 1849, property on which taxes may be levied in each municipality, shall be taxed in proportion to its value ; no one species of property shall be taxed higher than another species of property of equal value, on which taxes shall be levied. We cannot regard the words " throughout the State " as used in the first *alinea* of article 127 as limiting the operation of the great principle which it declares. On the contrary, they convey to our minds the idea that in no part of the State of Louisiana, can taxes not equal and uniform be lawfully levied, whether by the State government or by the municipal government on which the Legislature has chosen to confer taxing power. The principle of equality and uniformity in taxation is inherent in and underlies every system of government not despotic, and it acquires no additional force by the formulated expression of it in the organic law, which, in that respect, is simply declaratory.

The subsequent phraseology of article 127 seems to us to place the meaning beyond doubt. It relates to property on which taxes may be levied *in this State.* Taxes may be levied on property *in this State*, for State purposes, for parochial purposes, for municipal purposes, and there is not one word in the article in question which limits its meaning to taxation by the State for State purposes, or indicates the intention of the convention, while guarding the rights of the citizens against unequal and oppressive taxation by the State, to leave them at the mercy of police juries in the several parishes, and mayors and aldermen or councils in the numerous towns and cities of the State. Certainly, it would not be possible to establish an equal and uniform tax for every parish and town and city, because their exigencies and requirements and resources are different. What the constitution means, what the law of equality and uniformity requires, is, that the tax, if levied by the State, must be at the same rate, throughout the State, and upon the valuation of the property taxed. If levied for parochial purposes, all the property taxed in the parish must be at the same rate on valuation—if the tax be for municipal purposes it must be at the same rate on valuation throughout the limits of the corporation. Any tax levied in any part of the State by any taxing power which does not conform to this rule of equality and uniformity so precisely formulated in act No. 127 is unconstitutional, *ultra vires* and void. We cannot assent to the doctrine in Duncan's case for another reason, and that is, that confessedly after the year

192

1848 the Legislature had no power under the constitution of 1845 to tax one species of property higher than another species of property taxed of equal value, and the Legislature could not confer upon a municipal corporation, the mere creature of its will, any power which it could not exercise by direct legislation.

The profound respect which we entertain for the late Chief Justice Eustis and the other eminent jurists who composed the Court over which he presided, has imposed upon us the necessity of stating at greater length, than we should otherwise have done, our reasons for holding, in opposition to their opinion, that article 127 of the constitution did control municipal taxation, and that all taxing power throughout the State, in any and every part of the State, must be exercised in strict conformity to the principle of equality and uniformity, first formulated in that article and preserved substantially in all the subsequent constitutions. See Gilmer vs. Sheboygan, 2 Black 510; Talcott vs. Pine Grove, 19 Wallace 575, and cases there cited from State Courts. If it be conceded, and we do not care to discuss that proposition now, that under the constitution of 1845, after the year 1848, the Legislature or a municipal corporation could select one species of property and impose a tax upon that species of property alone, excluding any other species of property made taxable by law, it would not thence follow, that the tax could be so levied on that species of property, whether by the State or by a municipal corporation, that the rate on valuation could be higher in one part of the

State if taxed by the State, or in one part of the city if taxed by a municipal corporation, than in any and every other part of the State or corporation.

Our attention has not been called to any decision or dictum sanctioning any such manifest injustice. But this is precisely what the Legislature did, by section 37 of the act of 1852.

The boundary between the Second and Third Districts is Esplanade street. The owner of real estate and slaves on the uptown side of Esplanade paid percentages for the four years ending in 1855 aggregating 8.09⅓, while his neighbor on the opposite side of that street paid in the same period 10.71⅓. Canal street separates the First and Second Districts; the proprietor on the upper side of Canal street paid 8.58⅓, while the owner of property on the lower side paid 8.09⅓. Felicity street is the dividing line between the First and Fourth Districts, and while the property of the lower side of that street paid 8.58⅓, that on the upper side paid 7.65⅓. Such injustice was too glaring to escape the notice of the Legislature, and the acts of 1856 put an end to it by subjecting all taxable property in the city of New Orleans to the same rate per cent upon the same basis and valuation.

Counsel for relator insists that section 37 of the act of 1852 is a contract binding on the State, the City and the Bondholders. Unquestionably there was a contract, and a very simple one, between the city and the bondholders. The city assumed the debts for which the several municipalities and Lafayette had been liable, and it executed its bonds

bearing interest payable semi-annually for the amount. The city also undertook to raise the sum of $650,000 per annum to pay the accruing interest and to provide for the gradual extinction of the bonds. The bonds were the evidence of the contract. The contract was to pay the amounts stipulated, principal and interest. That was the obligation of the contract, and that obligation is placed under the protection of the constitution of the United States, as well as of that of the State of Louisiana. But was it a part of this contract that the city should issue no other bonds or evidences of debt during the forty years of the running of these bonds? We think not. So long as the city paid the interest punctually, it was no concern of these bondholders what amount of debt might be contracted toward other persons. Legislative power and the sovereignty of the State may be assimilated to paternal power, which cannot be surrendered at will.

The powers conferred on municipal corporations are subject and must ever remain subject to legislative control, and the Legislature of to-day cannot impose restrictions on the powers of a municipal corporation which a future Legislature cannot modify or abridge, except where some vested right might thereby be divested or the obligation of some contract be impaired. In Board of Liquidation vs. McCann, the Supreme Court of the United States said: "We are not prepared to say that the Legislature of a State can bind itself without the aid of a *constitutional* provision not to create a further debt or not to issue any more bonds.

"Such an engagement could hardly be enforced against an individual, and when made on the part of a State it involves, if binding, a surrender of a prerogative which might seriously affect the public safety. The right to procure the necessary means of carrying on the government by taxation and loans is essential to the political independence of every commonwealth." 2 Otto 535.

These views are applicable to a municipal corporation. The Legislature of 1852 had the power to forbid the city to issue any obligation or evidence of debt, and the incapacity would continue until it was removed by the Legislature. The Legislature might refuse to confer on a municipal corporation the power to issue any bond for any purpose, but it could not bind any future Legislature not to confer that power. We find, in point of fact, that the Legislature two years after, in 1854, did authorize the city of New Orleans to issue its bonds for five millions to pay for stocks in railroads, and to provide for interest on three millions and a half of that amount by special tax on real estate and slaves. This may not have been wise; it certainly proved most disastrous to the city; but the Legislature clearly had the power to remove the restrictions imposed by the act of 1852.

It did not concern the bondholders that the old city debt should be apportioned to the inhabitants of the several municipalities, because as to them the separate indebtedness of the municipalities had been novated and discharged by the assumption and bonds of the city. It was no part of the contract with

them that the quota of the old city debt to be paid by the inhabitants of each municipality should be fixed on the basis of the value of the real estate in each in 1851, and that the quota should be added to the separate debt created by each, in order to ascertain and establish the amount of the entire debt of each. These details did not concern the bondholders. They were simply the result of the design of the Legislature to make the inhabitants of each municipality pay the debts of each as provided by section 26 of the act of 1836. It was no concern of the bondholders that the annual sum to meet the interest and finally to pay the bonds should be levied on real estate and slaves alone.

Indeed as far as their interests were concerned, it would seem that they would naturally have preferred to have the entire taxable property within the city limits subject to the payment of their bonds. Why these objects were selected we do not know, but it may be that it was because real estate and slaves constituted the greater part of the taxable value and were sufficient, and that the city desired to reserve the entire taxable capacity of every other species of property for other municipal purposes. All these details and arrangements were purely domestic ; they concerned no others than the inhabitants themselves, and their whole scope and design was to adjust among the inhabitants their respective contributive shares to the payment of what had become the common debt of the whole city. In the Sheboygan case, an act of 1854 provided that a tax to meet certain railroad bonds should be levied on

all the taxable property in the city. In 1857 the Legislature thought proper to restrict this tax to real estate exclusively. The suit was by an owner of real estate taxed under the act of 1857, whose property had been sold for taxes. The Court said the act of 1854 was not a contract. "The imposition, modification and removal of taxes and the exemption of property from such burdens is an ordinary exercise of the power of State sovereignty. There was no pledge, express or implied, that this power should not thereafter be exercised." 2 Black, 518.

It was not a bondholder who complained in that case, but the principle is applicable to the complaint by a bondholder, unless it were shown that the property exclusively subjected was not sufficient to pay the debt. Certainly it applies with much more force to a case such as that which we are dealing with, in which there has been not a withdrawal of property originally subjected to taxation for the payment of the bonds, but the subjection of the entire taxable property of the debtor in lieu of the special objects originally subjected.

The Legislature of Louisiana, in 1856, chose, in the ordinary exercise of the power of State sovereignty, which it had no power to surrender, to require all property to be taxed at the same rate on the same basis of valuation. This effectually repealed the special tax on real estate and slaves exclusively; but it did not impair the obligation of the contract with the bondholders, nor did it diminish either the sum to be raised annually for the consolidated debt

198

nor the resources from which that sum was to be raised.

In Dayton's case, 12 An. 515, this Court held the act of 1856 to be in strict conformity to the constitution. It equalized taxation and relieved the inhabitants of the burden of paying in each district the debt of that district, and imposed it equally on the whole city and its entire taxable property.

The bondholders have no right to interfere with the administration of the city government, by requiring a certain order in the business of the legislative departments of that government, and claiming the nullity of its proceedings if not in conformity with that order. Nor can they, nor any other creditors of the city, compel the city government to levy a special tax on one species of property, exclusively for their benefit.

If these bondholders ever had any right to demand the levy of a special tax, it was a tax on real estate *and slaves.* But the $5,000,000 worth of slaves that were subject to taxation in New Orleans have ceased to be property, and the burdens of the owners of real estate would be thereby greatly increased if the whole tax should now be levied on their property alone. Such a change was not contemplated by any of the contracting parties, and it would be equitable and just to relieve the owners of real estate of the additional burden, by subjecting to the payment of these bonds all the taxable property within the city limits if that had not already been done by the act of 1856.

We think that section 37 of the act of 1852, in so

far as it authorized the special tax on real estate and slaves, was violative of article 127 of the constitution of 1845, then in force ; that it was repealed to that extent by the acts of 1856, and that the acts of 1856 in that respect are in strict accordance with article 127 of the constitution of 1845 and the corresponding article 123 of the constitution of 1852, and that they in no manner impair the obligation of any contract with the bondholders, or with any other persons whomsoever. The levy of the special tax on real estate, as prayed for by relator, is legally impossible.

It is urged by counsel for relator that the opinion of the Court in the cases of Duncan, Cummings and Buffington interpreted the constitution of 1845, and that the bondholders acquired their rights with reference to this interpretation ; that article 127 was not applicable to municipal taxation. The answer is, if this be conceded, that in Duncan's case the Court decided nothing more than that the Legislature, or its creature, a municipal corporation, had the power to select a single object of taxation, real estate. In that case the object so selected was taxed equally at a uniform rate—1 per cent on the assessed value ; and in the other cases the taxes were equal and uniform, being a fixed sum on the trade or occupation in each case. No Court in Louisiana, so far as we know, has decided that when the object of taxation has been selected, it could be taxed at one rate on a given basis in one part of the State or city, and at a different rate or upon a different basis in another part of the city or State. If the constitution

of 1845 did not forbid such inequality in municipal taxation, it was forbidden by the fundamental inherent principle that taxation must be equal and uniform on the property taxed.

If the whole of section 37 of the act of 1852 entered into and constituted the contract between the bondholders and the city, we incline to the opinion that the whole contract would be void, because of the manifest inequality and want of uniformity in the special tax. But we think that the contract with the bondholders was that of which the bonds are the evidence, the lawful obligation of the city to pay the principal and interest as stipulated.

Relator maintains that at the time these bonds were issued the holders were entitled by law to compel payment by *mandamus;* that the right to use this remedy entered into and formed part of the contract, and that they cannot be deprived of this right by subsequent legislation. Laws relating to the forms of judicial proceedings are remedial, and the form in any case must depend on the law in force at the time the proceeding is instituted, without regard to the law at the time the facts on which it is based occurred. If, before the final decision, a new law should intervene and change the form, the form originally resorted to can no longer be pursued, unless the new law expressly declares that the pre-existing form shall be followed in the cases then pending. No individual can claim a vested right in the remedial process by which his demand might have been enforced at the time it accrued, when the Legislature has chosen subsequently to abolish that process.

(See Lively vs. his creditors, 4 Mart. U. S. 603; Scott vs. Duke, 3 An. 253, and authorities there cited.) What the suitor has a right to claim is the use of such remedy as may be adequate to his demand, not that he shall be permitted to enforce that demand in any special form or by any specific process. These views are fully sustained by the decision of the Supreme Court of the United States in Tennessee vs. Sweed, 6 Otto, and by many decisions of that court and of the State courts, cited at pages 73 and 74. The proceeding in Tennessee vs. Sweed was by *mandamus*, and brought after that form of proceeding in such cases had been prohibited by the State Legislature. The Supreme Court of Tennessee refused the writ; and the Supreme Court of the United States, on a writ of error, affirmed that judgment.

By the Code of Practice, article 746, final judgments rendered in the other States or foreign countries might be enforced summarily by executory process, just as mortgages may be enforced now without previous citation of the debtor. The Legislature chose by act of 1846, page 166, to repeal this provision of the law. Several cases in which this form had been resorted to were pending, some on appeal at the date of the passage of the act of 1846. This court held in every case that this change, pending the proceedings even on appeal, deprived the courts of the power to proceed further.

The repeal of the former law did not divest vested rights nor did it deprive the judgment creditors of adequate remedy. It prohibited the summary pro-

202

cess allowed by the former law and remitted them to the ordinary form of suit by petition and citation. See Scott vs. Duke, 3 Ann. 253 ; Kilgore vs. Planters' Bank, same volume 693 ; Commercial Bank vs. Workhouse, same 698 ; Featherstock vs. Compton, 8 Ann. 285.

The law to-day authorizes the mortgagee to have the mortgaged property seized and sold by executory process, summarily, without previous citation of the mortgagor. The remedy is expeditious, and no doubt the right to enforce mortgages *summarily* makes that form of security more desirable, more valuable. The Legislature may repeal this law at any time and remit the mortgagee to the ordinary form of proceeding by petition, citation, judgment and execution. Could any mortgagee pretend that this would be unlawful interference with his vested rights or that the obligation of his contract would be thereby impaired ?

In Strauss vs. Brown, 30 An. 79, a creditor sought to enforce his demand against the city of New Orleans by mandamus to compel the auditing officer to issue to him a warrant for the amount. We held that Act No. 5 of 1870, Extra Session, prohibited the remedy resorted to ; that it compelled the creditors of the city to proceed in the ordinary form ; and, after having obtained judgment, that it might be registered in the office of the Administrator of Public Accounts, and paid out of the next annual budget, as required by the act.

We also decided, in that case, that the act of 1870 does not deprive the creditors of the city of adequate

remedy ; that is, such remedy as creditors in general have against their debtors by suit in the ordinary form. Having obtained judgment he must proceed to have it paid in the manner required by the act and not otherwise. The right of relator (Strauss) accrued in 1876, under the dominion of the act of 1870, and we did not find it necessary to express any opinion as to the effect of the act with respect to pre-existing contracts and obligations.

In the Carondelet Canal Company vs. the Mayor and Administrators, the relator had obtained judgment against the city in the ordinary form, and had caused it to be registered in the office of the Administrator of Public Accounts. The Mayor and Administrators had failed to provide for the payment in the next annual budget after the registry, as required by the act. We held that the duty of the Mayor and Administrators was plain, and the right of relator absolute ; and that there was no means or process by which this right could be enforced, otherwise than by mandamus. We accordingly made the mandamus peremptory, requiring the Mayor and Administrators to provide for the payment of this judgment out of the next annual budget. 30 An. 129.

The present case dffiers from that of Strauss vs. Brown, in that the right of relator accrued long before the passage of the act of 1870 ; and it differs from the Carondelet Canal case, in that relator has not obtained judgment against the city, nor attempted to enforce its rights in the mode prescribed by that act. We think this act pertains entirely to the remedy ; that it is within the constitutional power of

the Legislature, and that it is obligatory alike on creditors of the city, whether their rights accrued prior to 1870 or subsequently.

If the seventh section of the act No. 31 of 1876 admits of no other interpretation than that it deprives any class of creditors of the city of New Orleans of the right to enforce their demands by judicial process, we think it would be in excess of legislative power and void. But if it is susceptible of the construction that it forbids creditors, bondholders and others, to proceed directly by mandamus to compel the levy and collection of a tax to pay the amounts due them, and requires all such creditors to proceed under the act No. 5 of 1870, we think it would not be violative of any legal or constitutional right.

If the seventh section of the act should be held to be violative of the constitution, it would not thence follow that the entire act is unconstitutional. We do not find it necessary to pass upon this act, because the views which we have already expressed suffice to dispose of this case ; and we prefer to reserve any expression of opinion as to the validity of the act, in whole or in part, until the question shall be presented to us in such shape, and between such parties, as will give us jurisdiction. Without reference to this act, the relator is not entitled to the relief which he seeks ; and that is the only matter to be determined on this appeal.

It is therefore ordered, adjudged and decreed that the judgment appealed from be annulled, avoided and reversed, and that the demand of relator be rejected and dismissed, with costs in both courts.

CONCURRING OPINION:
DeBLANC, Justice.

For upwards of twenty-five years, the validity of the bonds held by Relator has been again and again acknowledged by the Legislature and the courts of this State, by the authorities of the city of New Orleans, and by those who, until 1874, have been taxed to redeem those undisputed and indisputable obligations.

Those bonds evidence not the separate debt of a limited class, not a debt contracted by or in the exclusive interest of the owners of real estate, but the debt of the city, one which can be enforced, proportionally, against all of those for or by whom it was contracted, on the whole of their property, and assuredly not, as unjustly commanded by the 37th section of the act of 1852, against an arbitrarily selected fraction of the debtors, not on an arbitrarily designated species of property, not according to an assessment made since more than a quarter of a century, which no longer represents the value of even the property on which that unequal and iniquitous tax was imposed, but by the levy of a proportional tax on both the real and personal property of those who, collectively and not otherwise, are liable for that common debt, primordial and subsisting validity of which is not and could not be successfully assailed, with or without any constitutional enactment, as well before, as since the adoption of the

206

Constitutions of 1845, 1852 and 1868, a tax which, legitimately, can never be but a general and proportionate contribution, levied to carry out a public enterprise, to satisfy a public liability, neither can nor could be considered as equal and binding, unless imposed, according to circumstances, throughout the State, or throughout any of its subdivisions, on every species of property, except such as, in every civilized State, is tacitly or expressly, exempted from taxation by common consent or constitutional restrictions.

The act of 1852 imparted to the consolidated bonds a validity which no subsequent legislation could or can impair; but that act did not so far suspend and paralyzed the sovereignty of the State, that, after its promulgation, the State was powerless to correct a manifest error, to discontinue an indefensible injustice, to enlarge, within its own limits or the limits of any of its subdivisions, the category of the taxable property, and to more effectually secure, by the creation of an additional guaranty, the ultimate satisfaction of the acknowledged obligations of those subdivisions the rights of their acknowledged creditors. This it did in 1856, in obedience to the mandate of its Constitution, in accordance with the dictates of reason and justice.

In so doing, the State neither impaired, nor intended to impair the obligation of the city's contract, but merely exercised the undoubted privilege which it had and which its legislature could not surrender, to obliterate from the statute book the partial enactment which, until then, had authorized the levy of a discriminating, unequal and unlawful tax. That was

right; but, it is evident, the city's liability existed before, did not arise from and has survived the repealed enactment.

A constitutional law, or any constitutional section of a law, forms an inseparable part of a contract entered into during its existence; but, if any legislative act, or any section of an act which violates the constitution of a State, can be considered as part of a contract, it drags into it, a lifeless form, an absolute nullity, which may and should be disregarded, which no court could justly enforce.

The power to enter into a contract and the exercise of that power, being inseparable from the corresponding duty and obligation to voluntarily execute it, or suffer its legal enforcement, it is incontestable that, under either a special statute, the general law, and express stipulation or an irresistible implication, an adequate remedy, inseparable from a conceded and acquired right, is, as the right itself, vested in the creditor, to require and compel a compliance with the contract.

I concur in the opinion and decree read by Mr. Justice Marr.